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Canada, Banking and Commerce,
Standing Committee, 1938

SESSION 1938
HOUSE OF COMMONS

(42)

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

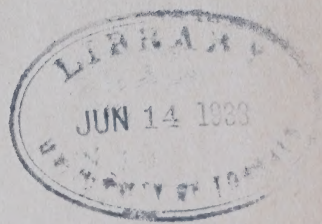
MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

THE COMPANIES' CREDITORS ARRANGEMENT ACT

No. 1

TUESDAY, JUNE 7, 1938



WITNESSES

Mr. H. S. T. Piper, Montreal Board of Trade, Montreal; Mr. J. Gerard Kelly, K.C., Toronto Board of Trade, Toronto; Mr. W. Kaspar Fraser, K.C., Dominion Mortgage and Investments Association, Toronto; Mr. Lee A. Kelley, K.C., Canadian Credit Men's Trust Association, Limited, Toronto; Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy, Department of Finance, Ottawa.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1935

ORDER OF REFERENCE

FRIDAY, May 6, 1938.

Ordered,—That the subject-matter of the following Bill be referred to the said Committee:—

Bill No. 26, An Act to repeal The Companies' Creditors Arrangement Act, 1933.

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, June 7, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Clark (*York-Sunbury*), Cleaver, Dubuc, Hill, Howard, Kinley, Landeryou, Leduc, McLarty, Martin, Moore, Plaxton, Raymond, Stevens, Vien, Ward.

In attendance: Mr. W. J. Reilley, Superintendent of Bankruptcy, Department of Finance; Mr. H. S. T. Piper, Chairman, Montreal Board of Trade's Committee on Bankruptcy; Mr. J. Gerard Kelly, K.C., Counsel, Toronto Board of Trade; Mr. W. Kaspar Fraser, K.C., Counsel, Dominion Mortgage and Investments Association, Toronto, and Mr. Lee A. Kelley, K.C., Counsel, Canadian Credit Men's Trust Association, Limited, Toronto.

Before proceeding to the order of business, Messrs. McLarty and Kinley referred to the sudden passing of an active and prominent member of the Committee in the person of the late A. M. Edwards, member for Waterloo South. It was resolved that the sympathies of the Committee be conveyed to Mrs. Edwards and family.

The Committee had under consideration the subject-matter of Bill No. 26, An Act to repeal the Companies' Creditors Arrangement Act.

Mr. Bertrand, sponsor of the bill, made a brief statement.

Mr. H. S. T. Piper, for the Montreal Board of Trade, was called and examined.

With respect to proposed amendments to the Bankruptcy Act submitted by the witness, it was ordered that they be printed into the record but with the reservation that their consideration did not come under the scope of the committee's reference.

Witness filed with the Clerk of the Committee a list of 206 applications under the Act in the district of Montreal.

Witness retired.

Mr. J. Gerard Kelly, K.C., for the Toronto Board of Trade was called and examined.

Witness retired.

Mr. W. Kaspar Fraser, K.C., for Dominion Mortgage and Investments Association was called and examined.

Witness retired.

Mr. Lee A. Kelley, K.C., for Canadian Credit Men's Trust Association, Limited, was called and examined.

Witness retired.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy made a brief statement.

Mr. Bertrand having stated that he wished to ask for leave to withdraw his bill, the Committee agreed to recommend accordingly to the House.

At 1 o'clock the Committee adjourned until Thursday, June 9, at 10 a.m. for consideration of Bill No. 124, An Act to amend the Copyright Act.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

Tuesday, June 7, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m. The Chairman, Mr. Moore, presided.

The CHAIRMAN: As we have a quorum now, gentlemen, we will proceed.

Mr. McLARTY: Mr. Chairman, before the committee proceeds with its business, I think it might be appropriate to record our regret at the passing of one of the most able and one of the most conscientious members of this committee. I refer, of course, to Alex. Edwards, the member for South Waterloo.

Tributes have already been paid in the House to his energy, industry and ability; but I think that in this committee he was particularly active and brought to bear his wide and extensive knowledge of financial matters.

I would like, sir, to move the appropriate resolution of regret at his passing.

Mr. KINLEY: Mr. Chairman, I rise to second the motion moved by Mr. McLarty. I have known the late Mr. Edwards but for a short time, but I think we will all agree that he was a man of sound judgment, one who judged fairly all things that came before him in his capacity as a member of parliament and as a member of this committee.

Mr. Edwards seemed to me to be the type of citizen that we in this country can ill afford to lose at the present time. He was the type who believed that obligations should be fulfilled and that the business men of this country should carry on in a way beneficial to the interests of the people at large.

I feel the committee is paying a tribute to a worthy member who has passed on, and I second the motion.

The CHAIRMAN: Will the members of the committee please stand. (The members rose.)

Mr. VIEN: I think, Mr. Chairman, that this resolution should be entered in our minutes and a copy sent to the deceased's family.

The CHAIRMAN: That will be done, Mr. Vien.

Gentlemen, we are now to deal with the subject matter of Bill No. 26, an Act to amend the Companies' Creditors Arrangement Act. Mr. Bertrand.

Mr. BERTRAND: Mr. Chairman, I do not wish to repeat the argument that has taken place in the House in connection with this bill. I presented this bill because I felt that there had been certain abuses and that the best way to overcome them was to repeal the Act.

I understand that representatives of the boards of trade of Montreal and Toronto are here. They are the persons who are most interested, and I state to this committee that evidently they feel it is better to withdraw the bill, and I am ready to withdraw the bill and allow the Companies' Creditors Arrangement Act to be amended as they suggest.

I should like, Mr. Chairman, if you would call the representatives of these boards. I understand that they have statements to make.

The CHAIRMAN: Is there anyone acting as solicitor for the boards of trade?

Mr. MARTIN: Mr. Claxton is here.

W. K. FRASER, K.C.: Mr. Chairman, I am representing the Dominion Mortgage and Investments Association.

The CHAIRMAN: I am asking now about the order of arrangement, the order in which you desire to make representations. I have before me here a list which includes the Montreal board of trade, the Toronto board of trade, the Dominion Mortgage and Investments Association, also the Canadian Credit Men's Trust Association.

Would it be agreeable if the representatives spoke in the order I have mentioned?

Mr. VIEN: Are all of them represented this morning? I would take the appearances first, Mr. Chairman, and we will see then who is present.

The CHAIRMAN: Is anyone here representing the Montreal board of trade?

Mr. PIPER: Yes, sir.

The CHAIRMAN: And anyone representing the Toronto board of trade?

Mr. KELLY: Yes.

The CHAIRMAN: And the Dominion Mortgage Investments Association?

Mr. FRASER: Yes, Mr. Chairman.

The CHAIRMAN: And the Canadian Credit Men's Trust Association?

I will ask the Montreal board of trade to express its views.

H. S. T. PIPER, Chairman of the committee on bankruptcy of the Montreal board of trade, called.

Mr. KINLEY: Mr. Chairman, are we dealing with the bill?

The CHAIRMAN: We are going to hear representations from the Montreal board of trade.

Mr. KINLEY: Mr. Bertrand said he was going to withdraw the bill in favour of some amendments.

The CHAIRMAN: I understood Mr. Bertrand to say that he was ready to withdraw the bill if necessary.

Mr. KINLEY: I see.

The CHAIRMAN: In view of the presence here of these different associations and their representatives, it seems to me that we should hear first what their representations are, or what their desires are in the matter.

The WITNESS: In November 1936 the Montreal Board of Trade appointed a committee to review the general bankruptcy situation. A report was submitted in March 1937 in which, among other things, it was recommended that the Companies' Creditors Arrangement Act be repealed and that provision be made in the Bankruptcy Act for arrangements as between debtors and their creditors before as well as after an authorized assignment or receiving order.

In investigating the operation of this Act, the greatest difficulty was found in securing information as to the number of occasions on which it had been used and as to what the result of its use had been. The Act provides no machinery for the recording or collation of these facts. Complete information can only be obtained by a search of the records of the many courts throughout Canada in which petitions to hold meetings are heard.

Such statistics as were prepared by the committee of the Board of Trade were for the most part, obtained from Dun's Bulletin, but so far as Montreal is concerned, a complete list was made of what are believed to be all applications under the Act since it came into force, and this list is available for the use of your committee.

I would like here, sir, to refer to these statistics and to point out that we are perhaps more than usually concerned regarding the operation of this Act because since its inception we have had 206 cases to May 31, 1938.

[Mr. H. S. T. Piper.]

By Mr. Vien:

Q. In Montreal alone?—A. In Montreal alone and the Montreal district. So far as we have been able to ascertain, as stated just now, through Dun's bulletin, there have been perhaps thirty-five or forty cases in the Toronto district. We have figures for Winnipeg for the year 1936, and there were no cases there. There was one case in British Columbia.

By Mr. Martin:

Q. You have not cases for the provinces, only for the cities?—A. No, sir; but our information is that the Act has been very little used outside of the districts of Montreal and Toronto.

It was generally understood in commercial circles that the main purpose of this Act was to facilitate arrangements between companies and security holders, thereby avoiding bankruptcy proceedings and the delays and expense incidental thereto.

Instead however, it has been found that the Act has been used to a very limited extent by such corporations, but its provisions have been extensively used by a large number of small companies, the creditors of which have been almost wholly unsecured.

Unsecured creditors, unlike security-holders, have no control over the debtor company's property. Under this Act assets and operations of the company remain under control of the debtor except in so far as a security holder or secured creditor may have control over his security.

There is no evidence of any complaint from secured creditors as to the operation of the Act. The criticism comes principally from the ordinary trade or unsecured creditor.

The criticism may be summarized under the following heads:

- (1) Meetings are called at the instance of the debtor company, notwithstanding the fact that the company may be in bankruptcy or in liquidation under the Winding-Up Act.
- (2) The granting of a petition to call a meeting is invariably accompanied by a stay of all other proceedings.
- (3) Until the meeting is held, or an arrangement is effected, the debtor company may:
 - (a) make payments (e.g. to creditors, for salaries, etc.);
 - (b) process raw materials—a matter of vital importance in the Province of Quebec where the law permits revendication. During the delay required to submit the proposal the unpaid vendor may lose his right to repossess the goods sold.
 - (c) conduct its business without control.
- (4) When a meeting is summoned, unless the court so orders:
 - (a) a statement of the debtor's affairs need not accompany the proposal;
 - (b) a list of creditors need not be issued;
 - (c) there is no provision for an examination of the debtor's affairs;
- (5) The Act does not specify the period of time to be allowed in calling the meeting, so that creditors at a distance frequently find it impossible to attend or to be represented, on account of insufficient notice.
- (6) Frequently proxies are issued by the debtor company and executed in favour of the company or a nominee of the company by creditors unable to attend or by creditors for small amounts.
- (7) The debtor company may without notice to its creditors alter its proposal at the meeting.
- (8) There is no provision that a representative of the debtor company shall not preside and control the meeting and this often happens.

- (9) Creditors' claims may not be admitted by the company in which event summary application must be made by either the company or the creditor to the court for a decision.
- (10) The company may permit creditors' claims for the purpose of voting but later deny such claims.
- (11) The statement of affairs prepared and submitted by the company is not usually verified. It may not classify the creditors nor fully disclose the debtor's true position so as to enable the creditors to judge whether the proposal is feasible and fair.

While the creditors may demand an examination and further information, the fact remains that they are at a decided disadvantage in not having that control which the Bankruptcy Act provides in similar circumstances.

- (12) Should an examination of the debtor's affairs be asked, the debtor cannot be compelled to pay the cost thereof, creditors are reluctant to assume such expense as the company may at any time elect to withdraw its proposal or it may make an assignment.
- (13) The Act may be and has it is believed been used by companies formed for the express purpose of effecting a compromise.

To illustrate this point I should like to read a report which was supplied us by the Better Business Bureau regarding such a case.

They say an interesting case is that of X & Company, a registered partnership consisting of a father and two sons. This partnership transferred all its liabilities and assets on October 31, 1937, to a company to be formed under the name of———. A charter was issued on November 5, 1937. The creditors were not notified of the transfer of the assets at this time and whilst these changes were going on within the firm, creditors were continuing to grant credit. On November 12, the company applied to the court to be allowed to proceed under the Creditors' Arrangement Act.

The first news to reach the creditors was when they opened their mail on November 15 and found a notice of a meeting of creditors, which asked to approve of an arrangement for the settlement of all claims of unsecured creditors. The notice of the meeting did not state what offer would be made to the creditors but merely that at the meeting an offer would be submitted. At the meeting the creditors were asked to accept its preferred shares.

The new company was capitalized at 50 shares of common and 900 shares of preferred. Practically all the common shares were issued to the former partners. The preferred shares, having a par value of \$100 each, were to be allotted in settlement of creditors' claims. The principals were able to gather enough proxies to secure the necessary majority to carry the proposal at the meeting of creditors held on November 27. Three days later it was ratified by the court.

Before the proposal submitted under the Creditors' Arrangement Act was ratified by the court, the company had assets, fixed and otherwise, of \$190,653.08, and liabilities of \$161,081.33. Of the latter figure, \$116,722.83 represented unsecured trade credit liabilities subject to the arrangement. The net result of the arrangement, therefore, was to hand over the uncontrolled management of the company to the former partners for the preferred shares carrying no voting privileges. The trade creditors now virtually become partners or part-owners of the business, without any voice in the management. Any new debts incurred from November 15 will rank against the assets; the old creditors by taking shares forfeited their rank.

At the meeting of creditors the lawyer for the company stated quite frankly that the assets had been transferred to a limited company, particularly with

[Mr. H. S. T. Piper.]

a view to the company going under the Creditors' Arrangement Act. He told the creditors the Act did not apply to a registered partnership.

By the Chairman:

Q. Mr. Piper, is there any objection to stating the name of the company?—
A. Well, sir, I must leave that in your hands. I am in the hands of the committee.

The CHAIRMAN: Does Mr. Reilley identify the case?

Mr. KINLEY: I think the case should be identified.

Mr. MARTIN: I do not think so.

The CHAIRMAN: Does the committee desire identification?

By Mr. Bertrand:

Q. Is it not a fact, Mr. Piper, that between the incorporation of the company and the time that the petition was made part of the assets were used to pay to the bank the loans that were guaranteed by the ex-partners?—A. I have no information on that.

By the Chairman:

Q. What is the name of the company?

Mr. MARTIN: Apparently they did not act legally.

The CHAIRMAN: I cannot see any objection to the name being given.

Hon. Mr. STEVENS: If you are going to bring a number of these forward, all right; but if you are going to bring only one company forward, why state its name? If we are going to put their names on the record, we ought to bring in a number of the companies.

The CHAIRMAN: Mr. Piper is giving evidence of the abuse of the Act, and it is a purely theoretical statement unless we have identification of the company. However, I will not press the question.

Mr. LANDERYOU: Mr. Chairman, full information would have to be disclosed, the amount of the assets and everything else. We would have to go into the whole thing.

The CHAIRMAN: I feel that to mention a case of that kind without giving the name is of questionable value. However, if you care to put it in in that form, it will stand for what it is worth.

Mr. KINLEY: The Creditors' Arrangement Act is supposed to be an improvement on an Act which has been criticized and which is a very cumbersome thing, that is, the Bankruptcy Act. Now, if these men who are giving expert evidence here would tell us wherein it is an improvement on the other Act, and compare the two, if we are going to destroy this one, we are going back to the Bankruptcy Act, and I think it is important to know, if we destroy this one, what we are going back to. They should have that in mind in presenting this to the company.

Mr. BERTRAND: I think they have that in mind. In 1921 it was even better than what we have to-day, but that part of the Bankruptcy Act was repealed because at that time there was no superintendent of bankruptcy, and it was found out that a certain number of trustees, as soon as they would see that somebody was being sued, would go to these persons and ask them to settle with their creditors by virtue of this Act. It was so bad that the government had to repeal that part of the Act, and later on the superintendent of bankruptcy was named. If we had had the superintendent of bankruptcy in 1921 it would not have been necessary to withdraw that part of the Act.

All I wanted, when I presented this bill, was to cure the evil in some way, and I think Mr. Reilley has a suggestion to make as to how to replace this Act and fix it in some way so that the abuses will not take place in future.

Mr. McLARTY: I should like to have a point cleared up for my own satisfaction. Is it the intention, if this bill passes, to have amendments made to the Bankruptcy Act which would be designed to get away from some of the difficulties that Mr. Piper has already mentioned, and, at the same time, to give an honest creditor a chance to make a compromise somewhat similar to that now enjoyed under the Companies' Creditors Arrangement Act? Is that the suggestion?

The CHAIRMAN: Perhaps I was wrong in my interpretation, but it seems to me it would be better to let Mr. Piper finish his statement and then we can come to a decision. The only thing I wanted to suggest was that when evidence is given to the committee of a specific illustration, or what is supposed to be a specific illustration, without mentioning the name, it carries but questionable weight with the members of the committee. However, continue, Mr. Piper.

Hon. Mr. STEVENS: I am not objecting any further to the names, except that I do not think you should limit it to one company.

By Mr. Vien:

Q. Are you through with your statement, because there are quite a few questions to put, and I think it would be preferable to have your full statement first?—A. I think it will be seen that the points raised by members of the committee have been well covered in this statement.

(14). The Act makes no provision for the payment of the expenses of submitting the proposal.

There are certain expenses sometimes incurred in submitting the proposal and petitioning the court, and so forth, and without any provision for the payment of these expenses the company may be forced into bankruptcy.

As the Act requires the approval of a proposal by three-fourths in value of the creditors, or of the class of creditors affected, present and voting either in person or by proxy, the importance of some of the objections listed becomes obvious.

Summed up, they revolve around the fact that the debtor may control both his own affairs and the machinery for considering the proposal.

Although the Act provides that general rules may be issued by the Governor in Council, this has not been done and there is no evidence that the courts in any of the districts concerned have applied any particular rules providing adequate control by unsecured creditors.

It is not surprising, therefore, that a number of companies have made use of this Act with a view to evading the protection to creditors and the governmental supervision which would obtain were proceedings taken under the Bankruptcy Act.

Having found that the facilities of the Companies' Creditors Arrangement Act could be widely abused, the committee of this Board at first recommended the complete repeal of the Act as otherwise the door would be left open to the fraudulent debtor whose activities have been so successfully curtailed under the Bankruptcy Act. In view, however, of representations that the Act had served a useful purpose in connection with company reorganizations, it is respectfully suggested that the Companies' Creditors Arrangement Act be amended by limiting its application to cases where a company has an issue of bonds or debentures issued under a trust deed running in favour of a trustee, whether or not secured, and a compromise or arrangement is proposed between such company and the holders of such issue.

[Mr. H. S. T. Piper.]

It is further recommended that amendments be made to the Bankruptcy Act to provide for compositions, extensions of time or schemes of arrangement before, as well as after, a receiving order or authorized assignment is made, and attached hereto will be found our recommendations as to the scope of such amendments.

According to the Report of the Internal Trade Branch of the Dominion Bureau of Statistics, in 1930 there were 10,124 companies in wholesale and retail trade and service establishments as opposed to 151,836 partnerships or individual traders. It cannot be seen why the privilege of making a composition before bankruptcy, which is now available to incorporated companies only, should not be extended to individual traders and partnerships, and, in case the amendment proposed above to the Companies' Creditors Arrangement Act is enacted, to the classes of companies not covered by that Act.

The creation of the office of Superintendent of Bankruptcy and the general revision of the Bankruptcy Act as a whole in more recent years has entirely changed the course of bankruptcy proceedings. Bankrupt estates are administered by licensed trustees, and creditor-inspectors, subject to the control of the courts and to the supervision of the Superintendent of Bankruptcy.

It is hardly necessary to state that the safeguards provided by the one Act and the very loose provisions of the other make unfavourable comparisons possible and explain the popularity of the Companies' Creditors Arrangement Act with any fraudulent debtor who desires to be relieved of liability under the more favourable auspices of an Act which makes a close scrutiny of his affairs very difficult. It is believed that it was never the intention of the Act that it should cover such cases and the purpose of the proposed amendment is to restrict its application to the cases it was intended to cover.

I have here, sir, both the proposed amendments to the Companies' Creditors Arrangement Act and a list of suggestions which we have drawn up covering proposed amendments to the Bankruptcy Act, if it is the wish of the committee that these be read.

Mr. VIEN: I think they should be read, Mr. Chairman, so that we shall have them in the record.

The CHAIRMAN: I think they could be placed on the record without being read.

Mr. MARTIN: In that event there will be no opportunity of questioning the witness.

Mr. VIEN: It would be interesting to hear the proposed amendments. Could you read the proposed amendments?

Mr. FRASER: I have a number of copies here.

Mr. VIEN: At the same time, I think they should be read into the record.

The CHAIRMAN: Distribute the copies.

Mr. VIEN: This will be printed, Mr. Chairman?

The CHAIRMAN: Yes. Is it the desire of the committee to have Mr. Piper read the amendments?

Mr. HOWARD: Yes; they are only short.

The CHAIRMAN: Read them, Mr. Piper.

Mr. BERTRAND: Mr. Piper, will you read the amendments?

The WITNESS: Yes, sir. I may say, Mr. Chairman, that most of the interests which I know are represented here this morning are in agreement as regards these amendments to the Companies' Creditors Arrangement Act designed to remove the abuses of which we have complained.

Repeal Sections 3 and 4 as they now stand and substitute the following:—

3. The provisions of this Act shall not apply in the case of any debtor company unless there is outstanding an issue of bonds, debentures,

debenture stock or other evidences of indebtedness of such company or of a predecessor in title of such company issued under a Trust indenture running in favour of a Trustee, or Trustees, whether or not secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or an assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, and a compromise or arrangement is proposed between such debtor company, and the holders of such an issue.

Section 4 would then read:—

4. Where a compromise or arrangement is proposed between a debtor company to which the provisions of this Act apply, and its secured creditors or its unsecured creditors, or any class or classes of them, the Court may, on the application in a summary way of the company or of any creditor or of the Trustee in Bankruptcy or liquidator of the company, order a meeting of such creditors or class or classes of creditors, and, if the Court so determines, of the shareholders of such company to be summoned in such manner as the Court directs.

Amend Section 5 by striking out in the fifth line the words "Sections 3 and " substituting the word "Section," and by striking out in the same line the words "or either of such sections."

Section 16 (a) Add new section as follows:—

16. (a) The applicant shall promptly after the issue thereof mail to the Dominion Statistician, Department of Trade and Commerce, Ottawa, true copies of all orders made by the Court under the provisions of this Act.

The purpose of the amendment, Mr. Chairman, is to remove from the operation of the Companies' Creditors Arrangement Act proposals by companies unless there is a corporate issue of bonds, debentures, and so forth.

The recommendations as to proposed amendments to the Bankruptcy Act are as follows:—

The CHAIRMAN: Before you proceed, Mr. Piper, is it the opinion of the committee that this matter comes within the purview of our reference?

Mr. VIEN: Mr. Chairman, a bill has been referred to us and during the consideration of the purport of the bill it develops that it would be preferable not to repeal the Act but to amend the Companies' Creditors Arrangement Act and the Bankruptcy Act. I think it is sufficiently linked up with the subject matter of our study for the committee to consider the suggestions made by Mr. Piper.

Mr. McLARTY: Mr. Chairman, it would be almost impossible to pass an opinion on the amendments that are now suggested to bill 26 which limits the application of the Companies' Creditors Arrangement Act unless we knew the definite proposals that were going to be made as to amending the Bankruptcy Act to fit into the situation that we would find ourselves in after bill 26 passed.

Mr. VIEN: Exactly.

Mr. BERTRAND: The bankruptcy law and the Companies' Creditors Arrangement Act should be only one bill. In England there are three sections of the company law with reference to the arrangements between companies and creditors, and these three sections are included in the company law. So is the Winding-up Act incorporated in the company law. Here we have different laws, and it would be far better if they were all linked together.

Mr. MARTIN: Are you seeking not to withdraw your bill?

Mr. KINLEY: I think it should be clear as to these amendments. In effect they mean that unless a man has a mortgage or a bond issue he does not come under the Companies' Creditors Arrangement Act.

Mr. McLARTY: That is a corporation.

[Mr. H. S. T. Piper.]

Mr. KINLEY: Yes. A corporation. That is quite a change in principle, because it means elimination of the little fellow and elimination of the man who tries to do business without borrowing money from other people. I do not see why he should be eliminated. I cannot see that at all.

The WITNESS: We have, of course, made due provision for that very point.

Mr. KINLEY: The Bankruptcy Act, to my mind, is an Act that should be a last resort. It means that everything is thrown into the pot and sacrificed, and with legal expenses and other expenses it means that nobody gets anything. Everybody tries to get clear of the Bankruptcy Act, so far as I know, in any hopes that they have of getting anything out of the debtor who wants to arrange with his creditors.

Mr. BERTRAND: Mr. Chairman, insofar as Mr. Kinley's statement is concerned, this Act gives to-day a privilege to companies that partnerships have not got, and I know that the boards of trade, both of Montreal and Toronto, have proposed amendments to the bankruptcy law to permit partnerships and individuals to make arrangements, if we will only listen to them.

The WITNESS: Mr. Chairman, the situation at the moment is that arrangements are only possible by companies at the present time under the Companies' Creditors Arrangement Act before bankruptcy. Arrangements can only be made under the Bankruptcy Act after bankruptcy. Our proposal is that companies with only unsecured creditors shall not come under the Bankruptcy Act, but they may make a compromise without going into bankruptcy and without all that distribution and liquidation which the member speaks of, and may seek a compromise as they were able to do many years ago; but with the added protection of better administration under the bankruptcy law, that is, better supervision.

By Mr. Clark:

Q. You have made reference to courts. What courts have you reference to?—A. The competent courts in the various jurisdictions.

Shall I proceed, sir?

The CHAIRMAN: Yes.

The WITNESS: These are recommendations as to proposed amendments to the Bankruptcy Act:—

1. That proposals for a composition, extension of time, or scheme of arrangement, should be provided for before as well as after a receiving order or authorized assignment is made, and that for this purpose appropriate amendments should be made in the Bankruptcy Act to section eleven and such other sections as may be necessary.

2. That the procedure to be followed in calling a meeting of creditors to consider a proposal be by petition to the court, supported by a copy of the proposal, a statement of the debtor's affairs and a list of the debtor's creditors.

3. That if the court finds the petition to be well founded it should appoint a licensed trustee, selected as far as possible by reference to the wishes of the most interested creditors, and such trustee should as soon as possible convene a meeting of the creditors to consider such proposal and by registered mail send the creditors ten days' notice of the meeting, as well as a copy of the debtor's proposal, a list of the creditors and a statement of the debtor's affairs with the trustee's report thereon.

4. That on the issuance of an order by the court calling a meeting of the creditors for the purpose of considering a proposal there should be a stay of proceedings and the trustee should be vested with the powers of an interim receiver, or such other powers as might be considered necessary by the court to safeguard the rights of the creditors and others affected, while as far as possible permitting the normal conduct of the debtor's affairs.

5. That the trustee should be chairman of the meeting called to consider the proposal and he may be instructed by a resolution adopted by the majority in value of those present and qualified to vote to make a further investigation of the debtor's affairs. The proceedings should otherwise be subject to the order of the court which should provide that the proper remuneration and disbursements of the trustee shall constitute a charge on the assets of the debtor, prior to the claims of unsecured creditors and any dispute in respect of the amount thereof should be determined by the court upon summary application of the trustee or any interested person.

6. That the chairman of the meeting of those summoned to consider the proposal shall record the vote of each person qualified to vote thereon and shall file a copy of such record with the court and such record shall also include a list of those qualified to vote who did not vote in favour of the proposal. In the event of the proposal being accepted by the required three-fourths majority of the creditors present in person or by proxy the trustee shall report any facts which might justify the court in refusing to sanction the proposal. If approved by the court the proposal shall be binding upon all the creditors of the class to which the proposal was made.

7. That all proceedings in connection with proposals made by debtors should not be headed "In Bankruptcy," nor make any reference to the Bankruptcy Act.

8. That the trustee appointed by the court should promptly after their receipt or preparation mail to the Superintendent of Bankruptcy and to the Dominion Statistician, Department of Trade and Commerce, Ottawa, a true copy of the debtor's proposal, statement of the debtor's affairs, notice calling the meeting, report of the trustee, and every order of the court in connection with the proposal.

That, sir, completes the presentation of the Montreal Board of Trade.

By Hon. Mr. Stevens:

Q. Is the appointment by the court of a trustee entirely new?—A. No, sir. The court, under the Bankruptcy Act, appoints the trustee.

Q. That is regarding the Bankruptcy Act?—A. Yes.

The CHAIRMAN: Thank you, Mr. Piper.

Is it the desire of the committee to hear representations from the Toronto Board of Trade?

Mr. VIEN: I move that the representative of the Toronto Board of Trade be heard, Mr. Chairman.

J. G. KELLY, representing the Toronto Board of Trade, called.

The WITNESS: Mr. Chairman, the Toronto Board of Trade has worked fairly closely with the Montreal Board of Trade. There has been a good deal of correspondence between them and some meetings and conferences. In addition, the Toronto Board of Trade has consulted all other interested organizations, as far as we could find them, to find out their views.

The Toronto Board of Trade agrees that there is no complaint. No complaint has come forward from any secured creditor objecting to the Companies' Creditors Arrangement Act. Since the debtor does not have to use the Act if the secured creditors do not object to it, there does not seem to be any reason to interfere with an Act that has given satisfaction. That is the position of the Toronto Board of Trade, and we have enquired very diligently to find out whether there have been any complaints.

[Mr. J. Gerard Kelly, K.C.]

Our view is, with regard to the unsecured creditors, that protection could be given by the adoption of regulations or rules under section 17 of the Act.

By Mr. Martin:

Q. What does section 17 provide?—A. Section 17 of the Act provides that the Governor in Council may enact regulations.

By Mr. McLarty:

Q. Have there been any rules adopted under this section?—A. There have been none, sir.

In a letter of February 25th of this year to the Minister of Justice, the Toronto board of trade forwarded proposed regulations which had resulted from a conference between a number of interests, and these regulations were sent to the Montreal Board of Trade. The Montreal Board of Trade, as Mr. Piper has said, indicated that they were not in favour, as they did not think the rules went far enough.

The position of the Toronto Board of Trade is this: this is an application to amend or appeal the Companies' Creditors Arrangement Act. We see no reason for interfering with the rights of the secured creditors. We agree to the amendment to that Act which Mr. Piper has read. But we have never seen and never been shown the amendments to the Bankruptcy Act.

We have investigated, and we think that we would like sometime to consider the actual proposed amendments and to refer them to organizations that are interested, such as the Canadian Credit Men's Trust Association, and other organizations, before we are asked to express approval or disapproval. We were never shown these proposed amendments to the Bankruptcy Act, and I am without instructions from the Toronto Board of Trade. I know they would not allow me to support any amendments to the Bankruptcy Act without the qualification that they should be carefully considered and that the business men who are interested should have an opportunity of considering their exact effect.

By Mr. Vien:

Q. Therefore your submission would be that we should approve these proposed amendments to the Companies' Creditors Arrangement Act and leave the others stand for some time?—A. Yes, sir.

Mr. HOWARD: That is the only thing we can do.

By Mr. McLarty:

Q. Are you recommending that the rules you submitted some time ago should be incorporated in the amendment?—A. No. We still think that would be better. But we had reached this agreement with the Montreal Board of Trade that, in order to present an agreement when approaching the gentlemen of this committee, we should agree to the amendment of the Companies' Creditors Arrangement Act. But we did not expect to have the Bankruptcy Act thrown at us as part of that. We did not agree to that and we were taken by surprise; and I think the Canadian Credit Men's Trust Association represented here would oppose the Bankruptcy Act amendment at the present time. That, sir, is the Toronto Board of Trade's position.

By Mr. Vien:

Q. How long would it take you to reach a conclusion as to the amendment of the Bankruptcy Act?—A. I do not think it could be reached for—I think we should have two months.

By Mr. Martin:

Q. The effect of your submission, of course, is discrimination in the class of companies. I mean, section 3 of the proposed amendment clearly earmarks the character of the companies that shall come under the provisions of the Companies' Creditors Arrangement Act.—A. Yes.

Q. And the other kinds of companies and trade organizations that Mr. Piper mentioned, with a view to bringing them within the terms of the proposed amendment of the Bankruptcy Act, would be out.—A. I think it is really—if we are going to deal with the company, I think the discussion or the approach should be with respect to what creditors are you protecting rather than what companies are you dealing with. You can get into some difficulty if you keep looking at the debtor. After all, the debtor does not have to choose this Act at all. The debtor is free to do what he likes. He can go to the Bankruptcy Act or anything else. There is no compulsion on him. The effect of this Act is to give to a certain class of creditors—the majority of the creditors—power to coerce the minority to accept what appears to be a reasonable solution in the interest of the business community, rather than having one man hold out and say, "I have got a \$100 debenture or a \$100 bond and I will not agreed." We must work out some way of the majority enforcing what is in the interest of all, and not have a holdout. I think if you approach it from the company, it is misleading, because it is all dealing with creditors, because they are the only ones that have any complaints. I do not know whether I have met what you have stated.

Mr. MARTIN: As I understand it, the creditor would exist in the case of the smaller group, just as in the case of the larger group. Whatever way you look at it, either the creditor or debtor will, on the surface, be discriminated against, if these proposed amendments to the Bankruptcy Act are made.

Mr. BERTRAND: Mr. Chairman, in companies where there is an issue of bonds and a trustee, there is machinery where the creditors can come in and check everything and see where their interests should go or be left out; while in companies with no trustee and no bonds, the debtor is the only man that can come before the court and choose this law; and there is nobody to check up whatever he may say or whatever he may do, and that is why the trouble came up. Mr. Piper has forgotten to give to this committee the list of the cases in Montreal. You have 206 cases. It would be most important to have it.

The CHAIRMAN: Thank you, Mr. Bertrand.

Hon. Mr. STEVENS: What is puzzling me is this: as far as I understand, our order of reference is a bill, Mr. Bertrand's bill, which is a very simple bill calling for the repeal of the Companies' Creditors Arrangement Act. We have heard the Montreal Board of Trade and the Toronto Board of Trade. But there is a marked difference of opinion between these two important bodies on one part of the subject that has arisen, and that is amendments to the Bankruptcy Act. We all know that the bankruptcy law is an exceedingly difficult and delicate law. It is one that has been hard to design and very difficult to administer. It has taken many years to work it into what I might call smooth working condition—not perfect, but in fairly good condition. If we are going to launch into amendments of the Bankruptcy Act, I think this committee ought to go very slowly; not that I am for a moment criticizing any proposal that is made. But I do say that we should approach the question as a major subject, an important subject. Before the committee considers opening the question, I think they ought to have it studied by Mr. Finlayson, Mr. Reilley and others who are affected by these subjects—officers of the crown.

Mr. HOWARD: Yes.

Hon. Mr. STEVENS: And we should come here prepared, or at least with our officers prepared, so that when proposals—very definite and distinct proposals—[Mr. J. Gerard Kelly, K.C.]

posals—are made, we will at least know what we are talking about. It strikes me that we are travelling far afield from our order of reference which, as far as I know, is simply this bill of Mr. Bertrand's. Mr. Bertrand will understand I am not opposing his bill. I am saying that we are entering a field that may lead us into some pretty wide considerations. For my part, I do not feel at all equipped to proceed with very serious consideration of the amendments. Then I would like to say this, that if we are going to abandon what is before us, namely the repeal of this Act, and then if we are going to amend the Companies' Creditors Arrangement Act in a manner which appears to me to be altogether different from what parliament had in mind when they referred the bill to us, again I say we ought to approach the question very cautiously, and after full preparation. I was pretty much perturbed by an answer given a moment ago when, I think, Mr. Kelly rather emphasized, speaking from his standpoint, that the Companies' Creditors Arrangement Act is in the interest of the creditors, that it is wholly a creditors' act. But I do not look upon it as that.

The WITNESS: I did not mean that.

Hon. Mr. STEVENS: No? That was the answer that was given a moment ago.

The WITNESS: I am sorry, sir. May I explain?

Hon. Mr. STEVENS: Yes.

The WITNESS: I think that the only person whom we would find complaining would be a creditor, because a debtor chooses the Act or not, as he pleases; but the creditor, the one who has chosen the Act, may have a complaint, and I say they are the only ones who would complain.

By Hon. Mr. Stevens:

Q. But it is open to a company to take action under the Act?—A. Yes.

Q. In anticipation of that approaching bankruptcy which he desires to avoid?—A. Yes.

Q. Which, I think, was the real meaning or intent of the Act; and, personally, I am rather favourably impressed with that type of legislation. If we can avoid bankruptcy by compromise, certainly it is a desirable thing to do?—A. Yes.

Hon. Mr. STEVENS: Therefore, before we repeal this, or before we consider very serious amendments, I think the question should be referred to the officers of the government who are very familiar with it, and then we can approach the question. I think we should get a new order of reference telling us what parliament authorizes us to do; because I certainly think parliament would hesitate to instruct us to amend the Bankruptcy Act. In any case, before we approach the question we ought to have a proper order of reference, and come here equipped and with our officers prepared to discuss the matter and advise the committee, so that we can discuss it intelligently. In saying that I do not wish either of the gentlemen representing these two boards of trade to think that I am in any sense unmindful of the importance of their views. Not at all. But I think we have drifted in here this morning without really knowing what we were going to do or what we were going to be confronted with. I am certainly not prepared to go on with an intelligent study of these bills at the moment.

Mr. BERTRAND: Mr. Chairman, Mr. Reilley is here and has something to say to the committee, if you want to hear him. The resolutions were so numerous that something had to be done. As the bankruptcy law was not referred to this committee, it cannot be amended. If we listen to the representations of these different bodies here, we will know exactly what they want. If your committee then desires to make a recommendation to the government, I

can easily, after that, withdraw the bill, and allow the Minister of Justice or the Minister of Trade and Commerce to deal with the matter.

Mr. LANDERYOU: The witness stated that a letter had been written to the Minister of Justice regarding the regulations or amendments to the Act which they proposed in conjunction with the Montreal Board.

The WITNESS: Yes.

Mr. LANDERYOU: Would you give us the list there? Have you got it with you?

The WITNESS: Yes. We have it. I have just one copy here.

Mr. LANDERYOU: It should be placed in the record, I think.

Mr. HOWARD: Put it on the record.

The WITNESS: It is the memorandum that was followed by the rules on the second page.

The CHAIRMAN: Do you want it put on the record? It is very lengthy. I do not know. Is it the pleasure of the committee that the statement should be put on the record?

Mr. BERTRAND: I think, Mr. Chairman, it might not be necessary to print it, but it should be filed with the clerk.

Hon. Mr. STEVENS: What is it?

The CHAIRMAN: You might describe it, Mr. Kelly.

The WITNESS: The general purposes of the rules are these: We felt that the unsecured creditors were not adequately protected; being divided, not having a trustee or anybody to organize them, they very often had no voice and no way of getting at the facts. The rules are designed somewhat similarly, I gathered—although I have only heard them once—to the amendments to the Bankruptcy Act; to install a trustee as chairman of the meeting under the Companies' Creditors Arrangement Act to preside at the meeting, to investigate if necessary the statement of affairs provided by the company in applying to the court; to report to the creditors where he has verified the statement and to the court where there is any reason why the proposal should not be approved. It is all done without interfering with the Act at all, but merely to bring light, daylight, into every step that a debtor takes when he seeks to avail himself of the Companies' Creditors Arrangement Act. It is not hampering him at all; but still if he is going to do any of the iniquitous practices that Mr. Piper has spoken about, at least he will be conscious that there is a licensed trustee looking over his shoulder, watching him, and ready to tell the creditors when the meeting comes along.

By Mr. Bertrand:

Q. They form part of your submission?—A. They form part of our submission, except that we are content to allow the whole matter to stand with an amendment to the Companies' Creditors Arrangement Act. I think Mr. Piper introduced bankruptcy amendments which, frankly, appal us; because we think, as one of the members of the committee said, that it is a very delicate thing.

Q. In that case, I think it should be printed, Mr. Chairman.

THE COMPANIES' CREDITORS ARRANGEMENT ACT

Memorandum on Certain Weaknesses Experienced in the Operation of the Act as to the Claims of Unsecured Creditors Together with a Draft for General Rules under the Act for the Purpose of Affording Better Protection to Unsecured Creditors.

Although Section 17 of this Act contemplates that General Rules of procedure thereunder would be made, none have been laid down yet.

[Mr. J. Gerard Kelly, K.C.]

The Act provides amongst other things that:—

- (a) The Court may, upon the summary application of a debtor Company, order a meeting of its unsecured Creditors to be summoned in such manner as the Court directs to consider a proposal or arrangement between the debtor and its Creditors.
- (b) The Court may stay all proceedings against the debtor until such compromise or arrangement has been considered by the unsecured Creditors.
- (c) If a majority in number representing three-quarters in value of the unsecured Creditors *present and voting either in person or by proxy at the meeting* agrees to any compromise or arrangement *either as proposed or as altered or modified at such meeting*, the compromise or arrangement may be sanctioned by the Court and if so sanctioned shall be binding on all the unsecured Creditors.

As proceedings under this Act are more expeditious than proceedings under The Bankruptcy and Winding-Up Acts, it has been used extensively by financially embarrassed Companies and owing to the lack of General Rules of procedure thereunder, it has been applied by some debtor Companies in a manner which was both unfair and detrimental to Creditors. In a number of cases, companies have obtained Court Orders under this Act summoning meetings of Creditors to consider proposals for payment of liabilities in full and copies of such orders and proposals have been sent to Creditors with a proxy form made out in favour of the debtor's nominee. In many cases, neither a statement of the debtor's affairs nor a list of its Creditors were sent with the proposals. As it is frequently inconvenient for Creditors, particularly distant Creditors, to attend meetings to consider debtors' proposals, and as there is often insufficient time between the receipt of the notice and the date of the meeting to investigate a debtor's affairs, and as a Creditor may lose his vote unless he acts promptly, many Creditors who have but a slight knowledge of the existing condition of the debtor's affairs, have completed and returned proxies in favour of the debtor's nominee with the intention that such proxy would be voted in favour of the debtor's proposal for an extension. During the depression, many Creditors were willing to consent to an extension rather than risk either a bankruptcy or being forced to accept a compromise.

In a number of cases where debtors had submitted proposals for extensions under the conditions mentioned in the previous paragraph, their representatives informed the meeting of Creditors convened to consider such proposals, that after reviewing the position of the debtor's affairs, it appeared impossible to pay its Creditors in full over an extended time and that an amended proposal for a compromise of its debts at a rate on the dollar would therefore be submitted to the meeting. In certain cases, such amended proposals have been voted on and carried without notice of the proposed compromise being given to the absent Creditors. In such cases, the debtor's nominee holding Creditors' proxies has generally refrained from voting on the amended proposal and has thereby facilitated the debtor to obtain the required favourable majority of those *present and voting*. As the Act permits the debtor to make application to the Court to sanction a proposal, without notice to the debtor's Creditors, it appears that certain compromise proposals have been carried through and sanctioned by these methods when such might not have been the case if the intention to ask for a reduction had been disclosed by the original proposal.

Another objection to the present Act is that between the date upon which the Court makes an order staying proceedings against a debtor and the date of the Creditors' meeting, any debtor in the manufacturing business which desires to take advantage of its Creditors may cut up or convert its readily salable raw or bulk supplies into goods in process and thereby place itself in a position where its Creditors would have difficulty in realizing upon the debtor's

assets if the debtor's proposal were to be refused. Creditors should be given some control over the conduct of the debtor's business during this period.

Careful consideration of the terms of the Act does not indicate any completely satisfactory means of controlling this possibility. It is felt, however, that the provisions for appointment of a Trustee, as suggested in the proposed General Rules, go some distance towards controlling the debtor's affairs pending consideration of the proposal by the creditors and constitute a strong moral check on undesirable conduct by the debtor.

The Act does not provide for the appointment of an independent person to give all Creditors or possible Creditors reasonable and proper notice of the debtor's proposal and of the meeting to consider it, or for the appointment of an independent party to receive Creditors' proxies and to record Creditors' votes. The Act does not require statements of the debtor's affairs to be verified by affidavit and filed with the Court or for a summary of such statement and a list of Creditors to be sent out with the original proposal or to be submitted to the meeting of Creditors. A statement of affairs prepared by the debtor but unaccompanied by any declaration as to its accuracy is generally produced at the meeting of Creditors but unless some licensed Trustee has been consulted by the debtor, the statement submitted often fails to classify the Creditors (secured, preferred and unsecured) or to disclose the true position of the debtor's affairs. Investigations made by Creditors indicate that certain debtors' statements used in proceedings under this Act failed to make a complete disclosure of the debtors' assets or undervalued them. As the assumption is that the debtor will go into bankruptcy if the proposal is rejected, Creditors are reluctant to incur expenses on their own account to ascertain the actual value of the debtor's assets and the amount of its liabilities, including the validity of doubtful claims and of the preferences and securities attributed to certain Creditors when no provision is made in the Act for the payment of such expenses in the event of the proposal being rejected or the debtor being forced into bankruptcy.

With a view to eliminating these abuses and objections, it is suggested that the following General Rules, or General Rules to the like effect, shall apply to all proceedings respecting compromises or arrangements in which a proposal is made for modification of the rights of unsecured Creditors or any of them.

GENERAL RULES

1. Upon an application being made to the Court under Section 3 of this Act, a statement of the debtor's affairs substantially in Form I or in such other form, accompanied by a list of unsecured creditors, as the Court may approve, verified by the affidavit of a Director of the debtor company, and the debtor's proposal for a compromise or arrangement, shall be filed with the Court.
2. When the Court orders a meeting of the debtor's unsecured creditors to be summoned the Court shall select and appoint a Trustee licensed under The Bankruptcy Act to convene such meeting, in such manner and at such time as the Court may direct. The Court shall, as far as is possible, select a Trustee by reference to the wishes of creditors having substantial claims, if ascertainable at the time. The Chairman of the said meeting shall be the Trustee or such other person as the Trustee may in writing appoint.
3. When the Court orders a meeting of the debtor's unsecured creditors to be summoned, copies of the said Court Order, debtor's proposal and statement of affairs, Form I or other approved statement with a list of unsecured creditors shall forthwith be served upon the said Trustee.
4. Copies of the said proposal and notice of the meeting of creditors to consider the proposal, together with a summary of the debtor's state-

[Mr. J. Gerard Kelly, K.C.]

- ment of affairs, Form I or other approved statement and, unless otherwise directed by the Court, a list of the debtor's unsecured creditors having claims in excess of \$50 each with their addresses and amounts of their claims, a proxy form in blank and a form for proof of debt shall be transmitted by the Trustee to all unsecured creditors of the debtor of whom he has notice in such manner as the Court may direct.
5. The Chairman of the meeting may disallow or reserve for consideration of the Court the vote of any person claiming to be an unsecured creditor who shall not have filed proof of claim, to the extent that the Chairman has reason to believe such person is not entitled to rank as an unsecured creditor.
 6. The Trustee shall forthwith make such investigation as shall seem to him reasonable under the circumstances in respect of the verification of the assets and liabilities disclosed by the debtor's statement and report the result of his investigation to the meeting of unsecured creditors summoned to consider the proposal. In case the meeting desires an appraisal or inventory of the debtor's assets, or other investigation of the debtor's affairs, before voting upon the proposal, the Trustee may be instructed by a resolution passed by a vote representing a majority in value of the claims of the creditors present and voting either in person or by proxy at the meeting to perform such lawful duties as may be designated, and the meeting shall be adjourned for such time as is considered necessary for these purposes, provided that the Court, on the application of any interested person, may direct that the meeting be continued at such place on such date and after such further notice as it may prescribe and may dispense with compliance by the Trustee with such resolution.
 7. The Chairman shall record the vote of each unsecured creditor upon the debtor's proposal and shall file a copy of such record with the Court. Such record shall also include a list of the unsecured creditors as shown on the debtor's statement whose votes were not recorded upon the debtor's proposal. In the event of the proposal being accepted by the required majority of the creditors the Trustee shall report such facts as in his judgment might justify the Court in refusing to sanction the proposal.
 8. The Order of the Court shall provide that the proper remuneration and disbursements of the Trustee shall constitute a charge on the assets of the debtor prior to the claims of unsecured creditors and any dispute in respect of the amount thereof shall be determined by the Court upon summary application of the Trustee or any interested person.
 9. The Trustee appointed by the Court shall promptly after their receipt or preparation mail to the Superintendent of Bankruptcy and to the Dominion Statistician, Department of Trade and Commerce, Ottawa, a true copy of
 - (a) the notice calling the meeting referred to in general rule No. 4;
 - (b) the statement of the debtor's affairs referred to in general rule No. 1;
 - (c) the debtor's proposal for a compromise or arrangement referred to in general rule No. 1;
 - (d) the Trustee's report referred to in general rule No. 6;
 - (e) every order made by the Court in final disposition of the proposal.

By Hon. Mr. Stevens:

Q. I was going to ask a question there. Are you not really proposing to transform the Companies' Creditors Arrangement Act into a sort of junior

bankruptcy act?—A. No. There is this difference. This is why the amendments are designed, or the regulations. Bankruptcy involves the control of a debtor's business and of his estate. It involves the interposition of a trustee, custodian or interim receiver, who checks, who looks after and takes control out of the hands of the company or of the debtor. We say that is one of the things that makes it bankruptcy, as you suggested, sir. We say, however, that we will not do that. We will give no control, nothing involving liability or obligation, but we will put up there a man who must be shown—to whom everything must be disclosed, who will preside at the creditors' meeting and who will see to it that the creditors get a fair break, without in any way taking over the debtor's estate.

Q. Yes, but you would, I think, in practice. That trustee which you visualize in such delicate terms would develop really into a receiver. He might not have the powers; but I am speaking of, in practice, the effect of it.—A. I do not know, sir.

Q. That is my conclusion.

Mr. BERTRAND: I might say that in practice the Companies' Creditors Arrangement Act is the major bankruptcy law.

The CHAIRMAN: May I say that the proceedings of the committee are being recorded, and it is very difficult to record it unless the members speak so that the reporters can hear them.

Mr. LANDERYOU: Is it the intention to have this printed for the members?

The CHAIRMAN: Yes. Gentlemen, is it your pleasure to hear a representative of the Dominion Mortgage and Investment Association?

Mr. VIEN: I move that we hear him, Mr. Chairman, I agree with Mr. Stevens that we are a fit afiel; but the whole thing has developed in connection with discussion of this bill, and I think that it will be instructive for the officers of the Crown to have this record before them when they study the matter, and these gentlemen are here.

Mr. W. KASPAR FRASER, K.C., called.

The WITNESS: We feel that when this Act was passed in 1933—

By Hon. Mr. Stevens:

Q. Who are "we," please?—A. We are the Dominion Mortgage and Investment Association, and I would like to explain just who we are. We are an association with a representation—we have members consisting of the important insurance companies, loan companies and trust companies throughout Canada. We are here as investors. We have very substantial investments in bonds, companies of this sort; and we have had a great deal of experience in the last two years in connection with defaults and anticipated defaults, because we are called in to consult and advise upon plans, to criticize plans and to oppose plans that may not recommend themselves to members of our body as investors. In that way we have had a great deal of familiarity with the legislation that is available in this situation of default. When this Act was passed in 1933 it filled a gap there. But there was no provision at that time to enable reorganization of companies to be effected in certain situations, that is to say, where you did not want or did not have to have a receivership or a liquidation or a realization sale; and there were other situations too, which I will refer to. There is nothing new about this Act. It is in exactly the same terms as the English legislation that has been in force since 1870 and was made applicable to companies without requiring them to go into liquidation in 1907, so that you have almost 70 years of experience under that Act, which has been satisfactory in England and we feel ought to give

[Mr. W. Kaspar Fraser, K.C.]

satisfaction here. We feel that it is most important that this Act should be retained, certainly as far as securities and obligations of corporations are concerned.

By Mr. Martin:

Q. That is, retained without this amendment?—A. We are in agreement with the amendment, because the amendment retains the Act for corporate securities and obligations. In certain situations there is no other legislation available which will meet the requirements. Very often a sale or realization can be avoided, and the Act provides a ready means for reorganization which will preserve the credit and standing of the corporation, preserve the value of its securities, and will enable the reorganized corporation to go on without any disturbance; and it is absolutely essential from the standpoint of the investor that such a reorganization should be carried through, when you once start to carry it through, without any delay or litigation, without any liquidation or bankruptcy. If there is the slightest prospect or fear of a company going into bankruptcy, you will find that the holders of the securities are simply not interested in any reorganization that will be put forward. There are many issues of bonds of Canadian companies which do not contain any provision for modification by vote of the majority; and that is necessary, unfortunately, because a great many of our securities are held in the United States, and the American institutions will not purchase bonds that are secured under a trust deed which enables the majority to coerce the minority. The reasons they give are perhaps somewhat technical; but they are advised, and they take the position, that if you have such a position, it affects the negotiability of the bonds. And the fact remains that the American investor will not purchase such securities; his legal advisors will not permit him to do so.

By Mr. Martin:

Q. Have the Americans any scheme corresponding to this?—A. They have what is called section 77 (b) of the Bankruptcy Act.

By Mr. McLarty:

Q. It is receivership?—A. No, there is no receivership. The procedure is really quite simple. You have a plan. The plan is put forward by the company. The plan is prepared. It is submitted to the court. The court gives the plan a very preliminary hearing, and then permits the company to circulate the plan and to obtain the consent of the different classes of creditors. If two-thirds of each class of creditors affected consent in writing to the plan, the plan is then submitted to the court for consideration, when any one who wishes to oppose it can do so. The court makes an order and the plan then becomes effective. It is substantially the same procedure as we have, except that the consents of the creditors are substituted for a meeting of security holders. I think, personally, that that is undesirable, because I think it is desirable that the persons affected should have the opportunity of going and hearing arguments for or against the plan, rather than that they should simply be asked to sign a paper consenting to it or failing to consent to it. Under section 77 (b) there are no bankruptcy proceedings necessary at all.

By Mr. Bertrand:

Q. Mr. Fraser, in the English law there is nothing corresponding to subsection 2 of section 11 of our Companies' Creditors Arrangement Act?—A. What is that?

Q. I say in the English law there is absolutely nothing that corresponds to subsection 2 of section 11 of the Companies' Creditors Arrangement Act, which is a new departure altogether. As I said at the outset, it is an open door to

fraud. The company may accept any claims for the purpose of voting and reject those claims after that when they have settled with the creditors. This is a departure from the bankruptcy law, which has limited the claims of the creditors and many others, so far as the dividends and votes are concerned.—A. Under the English Act, as I understand it, that is a matter for the chairman, in the first instance, to reject or allow proofs. If anyone objects to it later on, when the application comes for the approval of the plan, the court then and there will go into these contested proofs. But in the situation with which we are familiar, nothing of that sort arises, because the people who are called to the meetings are bondholders. There is a procedure provided in their trust deed whereby they prove their ownership by either bringing their bonds with them or depositing their bonds or exhibiting them to the bank. In the bondholders reorganization, this difficulty never arises. You are either a bondholder or you are not a bondholder.

Q. I understand where there are debentures, you have a trustee dealing with the company?—A. Yes.

Q. And there are two to deal with—one representing the interests of the creditors and the other one representing the company?—A. Yes.

Q. Where there are no bonds and no trustees, the debtor company is doing almost what it wants to without any check whatsoever.—A. Well, I am afraid those are situations with which we are not familiar. We are here as representing bondholders and holders of securities who can easily prove their claims.

By Mr. Vien:

Q. But the amendment in which you concur takes care of that position?—A. Yes, exactly.

Mr. MARTIN: Except it leaves out some classes of debtors.

By Mr. Kinley:

Q. They do not interfere with you. That is the reason you do not object to it?—A. No, I would not put it that way.

Q. What about the man that has common stock in his company, who places money in common stock; should he be left out?—A. No. He is provided for in the Act. The Act permits him to be taken care of.

Mr. VIEN: The court may order that they be invited to attend.

The CHAIRMAN: Order, gentlemen. Mr. Kinley has the floor.

Mr. KINLEY: I would like to be clear on this point. I read here:—

The provisions of this Act shall not apply in the case of any debtor company unless there is outstanding an issue of bonds, debentures, debenture stock or other evidences of indebtedness of such company or of a predecessor in title of such company issued under a trust indenture running in favour of a trustee . . .

That is a great departure from the original Act, because the original Act includes all companies—any company in this country. Now you have a selective kind of company who can come under the Companies' Creditors Arrangement Act under this amendment.

Mr. VIEN: The point raised by Mr. Bertrand was that, in the case of companies where there are debentures or bonds, any trustee can take care of the interests of the debenture holders or bondholders. There is that trustee to take care of creditors; whereas, where there is no such thing, the ordinary creditors of the company which has no trustee, no bond or debenture issues, are not protected by anybody there to take care of their interests.

The WITNESS: Quite so.

[Mr. W. Kaspar Fraser, K.C.]

Mr. VIEN: Therefore, the amendment proposes to limit the Act to such companies as have a bond or debenture issue and for which there is a trustee appointed.

Mr. KINLEY: Mr. Chairman, I have in mind just at this moment a case that I am interested in now. A man made an improvident contract. He contracted to build a ship and he could not finish the work because he took the job too cheaply. Now, his creditors got together; instead of putting him into bankruptcy and destroying his shipyards and his plant in the community, they all got together and gave him an opportunity to try to work the thing out and make certain arrangements. That man had no bond issue. He had no debentures. He had common stock in his company. I do not want that man eliminated from any such arrangement as this, because I think it is a mistake. When I say "that man," I mean that class of men.

The WITNESS: I understand.

Mr. McLARTY: That class of company.

By Mr. Martin:

Q. What do you say about that?—A. What we say is that Mr. Piper has represented that there have been abuses which have existed in the cases of that type of man where there are only unsecured creditors. We regret that we have to concede that that is the case. We are sure there are no such abuses in the type of transactions which are still preserved under the amendment and which are of the utmost importance to the investors.

Mr. McLARTY: Mr. Piper went a little further, I think; to meet this situation which Mr. Kinley raises, he makes a definite suggestion as to amendment of the Bankruptcy Act.

The WITNESS: Yes.

Mr. McLARTY: It is true that we in this committee have no power over the Bankruptcy Act or any amendment thereto, but I am inclined to agree with Mr. Kinley; I would not want to see an amendment of the Companies' Creditors Arrangement Act adopted unless we had some definite guarantee that that class of corporation that Mr. Kinley mentioned will be protected. Of course, amendment to the Bankruptcy Act goes even further, including partnerships as well as corporations. I think that is pretty generally the feeling of the committee, that we are almost stymied, so to speak, Mr. Chairman. The order of reference clearly does not cover anything in the Bankruptcy Act. As Mr. Stevens said, we are in this position: I think we are willing to agree to the amendment to the Companies' Creditors Arrangement Act provided we can receive some assurance somewhere that the other class is going to be taken care of.

I have a great deal of sympathy with a great many companies that can avoid bankruptcy under the provisions of the Companies' Creditors Arrangement Act. I have had several applications and in each case they worked out successfully in the end, but here is my difficulty: under our reference we have not power to deal with the Bankruptcy Act. I do not see how we can deal with these amendments unless we get that power.

Mr. VIEN: We cannot.

Mr. MARTIN: Oh, yes, we can, easily.

Hon. Mr. STEVENS: Mr. Chairman, I very much dislike to appear to be discourteous to the gentlemen who are appearing here. But this is the first time I have even seen these proposed amendments to the Companies' Creditors Arrangement Act. These are very important amendments; they need to be studied. I have just glanced at them, but I can see from just a glance that they are far-

reaching. Apparently they are in the interest of one class of security holder or creditor. I think we should be extremely careful.

Where I think we made a mistake in procedure is that all this matter regarding the Bankruptcy Act and the amendments to this act ought to have been studied by the officers of the Crown before being brought to this committee. It is quite possible that the commissioner in bankruptcy, or whatever his title is, or Mr. Finlayson, might be able to offer some very simple amendments that would meet the situation. I feel very poorly equipped here this morning to discuss this matter. We have got to watch it and catch some observations here and there in order to have any appreciation of where we are drifting.

The CHAIRMAN: Mr. Reilley, will you come forward to the table, please.

By Mr. McLarty:

Q. You have not completed your statement, have you, Mr. Fraser?

The WITNESS: No.

Mr. McLARTY: Mr. Chairman, I wonder if Mr. Fraser could not complete his statement before calling Mr. Reilley?

The CHAIRMAN: Yes.

Mr. VIEN: Mr. Chairman, we cannot adopt either the amendments to the Companies' Creditors Arrangement Act, nor the amendments suggested to the Bankruptcy Act. We have no power. Our reference does not permit that. I agree with Mr. Stevens on that point. Mr. Bertrand having intimated that his bill will be withdrawn, there is now only one question before the chair: is it advantageous for us to hear these gentlemen further, or would it be preferable for the committee to refer them to the officers of the Crown to work out some legislation for a further sitting.

Mr. HOWARD: That is the idea.

Mr. VIEN: We have no jurisdiction even to amend the Companies' Creditors Arrangement Act. It is not before us.

The CHAIRMAN: Gentlemen, I have consulted the law officers of the Crown and it is their opinion that it would be extremely helpful to them to place the evidence of the representatives of the associations on the record, and, after that, we will decide what should be done.

The WITNESS: We say that there is no other legislation that is satisfactory or available which will meet the situation such as the Companies' Creditors Arrangement Act, because if a company goes into bankruptcy or into liquidation the bondholders will prefer to have their own receivership proceedings. They will prefer to go ahead and have a realization and, as everyone knows, receivership proceedings are expensive. They are damaging to the business of the company and are in other ways undesirable. Secured creditors take the position, rightly or wrongly, that neither the Winding-up Act nor the Bankruptcy Act is effective or satisfactory for the reorganization of capital structures of companies. For that reason they are unwilling to go into a reorganization that is attempted under the Winding-up Act or under the Bankruptcy Act. They would prefer to carry out their own reorganization which will usually be by way of sale.

As soon as you proceed to a reorganization by way of sale, you are in difficulties right away without the assistance of legislation of this sort, because in these large undertakings where you have to make a sale for cash, and under our procedure in Ontario, the ordinary mortgage sale, you can only sell for cash, and it is an absolute impossibility to get an adequate price.

It is true that the bondholders themselves can join together and deposit their bonds and tender their bonds in payment, but there again injustices result because the bondholder who does not deposit is paid off in cash on a prorated monthly basis. And that type of reorganization is liable to eliminate entirely unsecured

[Mr. W. Kaspar Fraser, K.C.]

creditors, because the bondholders have charge of it and if things have reached that stage they are not likely to do anything or feel that they can do much for the unsecured creditors.

In Ontario the only other alternative that we have is the amendment to the Adjudicature Act permitting the sale for a consideration other than cash, that is, securities or shares of a new company. But it has been held that if a company is insolvent, the provisions of that Act are not applicable. It has been so held by Mr. Justice McTague in the Abitibi case, and the case is now pending for judgment in the Court of Appeal. If the judgment of Mr. Justice McTague is sustained, the only Act under which a bondholders' reorganization can be effective is the Companies' Creditors Arrangement Act.

By Mr. Vien:

Q. In your opinion, should Judge McTague's opinion be sustained or should the Act be amended?

Mr. MARTIN: Well,—

By Mr. Vien:

Q. I mean to say, are you suggesting that legislation should be so framed as to permit even an insolvent company to be able to deal under this Act?—
A. Under the—?

Q. Under the Companies' Creditors Arrangement Act?—A. Yes, of course it should. It is a necessary condition that the company be insolvent. It is only if it is insolvent that it comes under the Act. I am quite in agreement with that. That is the only way by which the Dominion would have jurisdiction.

We say that this Act in the short time in which it has been really used has given very good service. The Act was passed in 1933. It was not until 1934 that the Supreme Court of Canada held that the Act was valid. And in 1936 the Farmers' Creditors Arrangement Act was held to be valid in a decision which supported and affirmed the decision under this Act.

In 1936 and 1937 there were very important reorganizations. There are at least six important reorganizations in which securities, debt securities,—I am not speaking of shares and other things that were reorganized,—amounted to \$61,200,000, starting in 1935 with the Gurney Foundry Company, the Winnipeg Electric Company, the Insurance Exchange Corporation of Montreal, the Canada Steamship Lines, the Western Steel Products Limited, and the Connaught Hotel Company Limited. So that you have had all over Canada important reorganizations, some of which, in the case of the Gurney Foundry Company, could not have been carried out at all under any other legislation that was available because the bonds did not provide for modification by a majority. It would have been necessary to have effected a sale.

The same was true in the case of the Insurance Exchange Corporation wherein, in connection with the circular that went forward to the bondholders, it was pointed out that if they wanted to accomplish the same result in the ordinary way by a realization sale, the additional costs and taxes, particularly taxes, would have amounted to \$65,000.

The Act is cheap and effective, and it enables reorganizations to be carried out which cannot be carried out in any other manner. It also preserves the investments and enables the Company to carry on.

In our experience, which is limited to corporation securities, we have found that the Act has been satisfactory. We find that these reorganization plans are only put forward after the fullest examination of the financial position and the prospects of the company. The plans are canvassed by the different committees representing different interests, and they go forward invariably with

the recommendation of every committee. If they do not go forward with the recommendation of the committees, they just simply do not carry.

And we find, further, that if there is any question when it comes to the court of there being any unfairness in the plan, or any unfairness in the way the vote was brought about, or any doubt as to the sufficiency of the vote, the plan is simply not approved.

I think that terminates what I have to say, except I would like to file with the committee a summary of these six important reorganization plans.

Mr. HOWARD: Mr. Chairman, I move that they be filed.

The CHAIRMAN: Carried.

Mr. VIEN: I think they should be printed, Mr. Chairman.

The CHAIRMAN: Mr. Howard, will you move that they be filed and printed?

Mr. HOWARD: Yes; filed and printed.

SUMMARY OF IMPORTANT REORGANIZATION EFFECTED UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT

Gurney Foundry (1935).

The bonds of this issue which matured serially had been sold in the United States. The trust deed, in conformity with the American practice, contained no provision for modification by extraordinary meeting of bondholders. The bonds had been in default as to interest and payment of serial maturities for some years. The earnings of the company did not justify the expectation that the defaults could be cured. An attempt had been made to meet the situation by obtaining the deposit of bonds under a deposit agreement. Unless all the bonds had been deposited, it would have been necessary to proceed to an ordinary mortgage sale and pay the non-depositing bondholders their pro rata proportion of the purchase price realized. A compromise was clearly indicated, which could only be effected under the Act if liquidation or receivership was to be avoided.

The due date of the bonds was extended to 1949; past due interest was funded by the issuance of non-cumulative preference shares; the rate of interest was reduced. Until 1939 interest was to be payable only if earned and unpaid interest to be funded by the issuance of preference shares. After 1939 part of the interest was made payable in any event and the balance was to be payable if earned. New bonds were issued under a trust deed giving effect to the proposals, which trust deed contained provisions for future modification of the bondholders' rights by extraordinary resolution. The plan was accepted and no further default has occurred.

That was a case where the Act had to be invoked because the trust deed contained no adequate provision for modification of the rights of the bondholders by action taken by themselves. There are a number of such trust deeds in existence under which many millions of dollars of bonds are outstanding in the hands of the public.

Winnipeg Electric and subsidiaries (1935).

The plan involve a consolidation and re-adjustment of the funded debt and share capital of Winnipeg Electric and four subsidiaries and the consolidation of the properties and operations of the parent company and two of the subsidiaries into the parent company, making the two remaining subsidiaries wholly owned and the substitution of securities and shares of the parent company for the securities of the subsidiaries outstanding in the hands of the public. The situation was a very complicated one and was further complicated by the existence of guarantees by the parent company of bonds and other obligations of the subsidiaries. This was a case where provisions

[Mr. W. Kaspar Fraser, K.C.]

were contained in the relevant trust deeds or some of them for modification of the rights of the bondholders under the trust deeds. However, there were agreements in existence on the part of the parent company in respect of its guarantees given to holders of securities of the subsidiaries which were to be released and it was found necessary or convenient to hold meetings of security holders under the Act.

It appears from the note at the foot of page 20 of the Plan that it was considered desirable to take advantage of the provisions of the Act, notwithstanding that the trust deeds may have contained provisions for modification. It is pointed out that the majorities under the Act were less than those required under certain of the trust deeds but that court sanction under the Act was necessary though not necessary under the provisions of the trust deeds.

Court sanction is a very desirable protection.

Committees of various classes of security holders had been formed and the plan carried their endorsement. Accordingly, this was a case where the provisions of the Act facilitated the carrying into effect of a comprehensive reorganization.

Insurance Exchange Corporation Limited (1936).

There were outstanding in the hands of the public first mortgage bonds maturing serially. Defaults in payment of maturities from 1932 on had occurred; interest was in default for several years; the revenue from the property which was an office building had decreased materially and a further reduction in revenue was expected.

The issuing house claimed to rank as a bondholder in respect of a substantial amount of bonds acquired by it and for interest coupons paid by it at maturity, which claim was not admitted. In addition, the issuing house held junior bonds, a junior mortgage, a substantial amount of unsecured indebtedness and all the capital stock. Under the plan the claim of the issuing house was settled on the basis of its ranking as a bondholder for a reduced amount.

The trust deed contained no provision for modification.

If the bondholders had pursued the only other remedy open to them, viz, realization by judicial sale, it would have been unlikely that any reasonable bid would have been forthcoming; the bondholders would have had to bid in the property and the procedure would have involved the payment by the bondholders in cash of a special provincial tax and costs and expenses which were estimated to amount to not less than \$65,000.

The scheme of arrangement (in addition to the settlement of the claims of the issuing house) involved an exchange par for par of the existing bonds for new bonds carrying a reduced rate of interest part of which was at a fixed rate and the balance was payable if earned.

In addition the bondholders received approximately two-thirds of the equity in shares of the company represented by voting trust certificates issued under a voting trust agreement ensuring control of the company's operations by the bondholders.

The trust deed contained no provision for modification of the rights of the bondholders and accordingly the scheme could only have been carried out under the provisions of the Act.

Canada Steamship Lines (1937).

The principal feature of interest as regards this reorganization for the purposes of the present discussion, apart from the sums involved, was that the plan was the result of long continued negotiations between the bondholders' committee and the Company and that the plan was recommended by the committee as being preferable to the alternative of expensive proceedings to enforce the security. I do not know whether the trust deeds contained provisions for

modification by the debenture stockholders or the bondholders. The powers given by the scheme to the Bondholders Re-organization Committee would have been of doubtful validity under a scheme effected by extraordinary resolution only. The following is a summary of the effect of the plan taken from The Financial Post Corporation Service of March 29, 1938.

In April, 1936, the bondholders' protective committee for the 6 per cent first and general mortgage bonds issued a plan of reorganization, which proposed the creation of new first and general mortgage bonds, new preference and new common shares, with no change being made in the 5 per cent first mortgage debenture stock. This plan did not meet the approval of the directors, however, and changes were suggested which included the redemption of the 5 per cent consolidated mortgage debenture stock, thus making the 6 per cent first and general mortgage bonds a first charge on the company's assets.

The final reorganization plan which was approved by security holders on Jan. 21, 1937, provided for the following:

(1) The redemption of the existing 5 per cent consolidated mortgage debenture stock on Aug. 15, 1937. This stock, amounting to \$2,128,616 at Dec. 31, 1936, was redeemed out of the company's cash resources.

(2) The creation of the following new securities which were distributed to holders of the old securities as shown below:

(a) An issue of \$10,500,000 of 5 per cent bonds, due Jan. 2, 1957, being part of an authorized issue of \$17,500,000 which became first mortgage bonds when the old consolidated mortgage debenture stock was redeemed.

(b) An issue of 5 per cent preference shares, 229,250 shares of \$50 par value, making a total of \$11,462,500.

(c) An issue of 300,000 no par value shares, with a book value of \$3,391,500.

Basis of Distribution:

The new securities were distributed as follows:

(1) Holders of old 6 per cent first and general mortgage bonds received \$600 principal amount of new 5 per cent bonds, 13 1/10 shares (\$655 principal amount) of new preference stock and 3 new common shares (a total of 52,500 shares) for each \$1,000 principal amount of old bonds held. Arrears of interest on the old bonds were extinguished.

(2) Holders of old 6 per cent preference shares received 1 1/4 new common shares for each old preference share held, a total of 187,500 new common shares. Arrears of preference dividends were extinguished.

(3) Holders of old common shares received one-half of one new common share for each share held, a total of 60,000 shares.

Revaluation of Assets:

Under the plan the paid-up capital was reduced from \$18,084,523 to \$14,854,000; total deficit as at Dec. 31, 1936, was eliminated and certain fixed assets revalued.

Savings to be Realized:

Savings to be realized from adoption of the plan were estimated as follows:

Elimination of annual interest and sinking fund on the debentures to be retired, \$462,000;

Saving in depreciation charges from writing down of assets, \$507,000.

Saving in interest charges from new 5 per cent bonds, \$525,000;

Additional reduction in annual charges, \$275,000;

Total estimated savings, \$1,769,000 per annum, of which \$1,419,000 would go to improve the company's net income.

[Mr. W. Kaspar Fraser, K.C.]

Western Steel Products Limited (1937).

This was a case where the Company was in receivership and liquidation. In addition to the bonds, there were advances by the bankers against the security of receiver's certificates, current liabilities of the receiver and manager and substantial unsecured obligations of the Company. The existence of such unsecured creditors for whom provision was made in the plan made it necessary to proceed under the Act.

The bankers accepted \$700,000 General Mortgage Bonds in payment of that amount of advances made against receiver's certificates; the Company authorized \$1,500,000 new first mortgage Bonds which were not issued; the Company assumed the balance (\$300,000) of the indebtedness of the receiver to the bankers and gave the bankers security for such indebtedness; bondholders, unsecured creditors and shareholders got common shares in various ratios.

The compromise had to be carried out under the Act because the Company was in liquidation and section 18 of the Act provides that sections 65 and 66 of the Winding-up Act are not to apply to a compromise or arrangement to which the Act applies.

Connaught Hotel Company Limited (1937)

The Company had mortgages outstanding on separate properties aggregating \$544,000; Bonds and general mortgage debenture stock were also outstanding. A new first mortgage for \$700,000 was placed on the property.

The holders of Bonds got \$25 cash and \$75 new second mortgage Bonds for each \$100 principal and also received back interest.

Series A debenture stock was created but was to be held for later issuance to complete unfinished portion of new additions.

The holders of debenture stock received \$50 debenture stock Series B for each \$100 principal of debenture stock held.

Additional debenture stock Series B was issued for cash.

NOTE.—Under the above plans where provision was made for shareholders, the appropriate proceedings under the relevant Companies Acts were taken at the same time for that purpose.

The CHAIRMAN: Is it the pleasure of the committee to hear the representative of the Canadian Credit Men's Trust Association?

Some Hon. MEMBERS: Yes.

LEE A. KELLEY, K.C., counsel for Canadian Credit Men's Trust Association Limited, called.

The WITNESS: Mr. Chairman and gentlemen, the Canadian Credit Men's Trust Association, Limited, is a nation-wide association representing very largely unsecured creditors. But it acts in two capacities, both as a trustee in bankruptcy and also as representative of its association members in looking after their claims in bankruptcy in which the Association itself may not be a trustee.

I am not going to labour you with any great amount of facts, because our clients have worked out this situation together with the Toronto board of trade, and we are in support of the allegations made by them.

The regulations which have been filed by the Toronto board of trade have been worked out with ourselves. Our contention is that we are even satisfied with the Companies' Creditors Arrangement Act, if those regulations are put into effect. We think it is workable so as to protect the unsecured creditor.

Confirming what the Honourable Mr. Stevens said, I do want to state that if there is going to be anything done along the lines of amendments to the Bankruptcy Act, then we are very urgently asking you not to do any such thing

until we have a full opportunity of considering those amendments, because we do feel that while even amending the Companies' Creditors Arrangement Act may not touch us—perhaps it is a selfish motive altogether because we are unsecured creditors—we do feel that if it would interfere with the working of the Bankruptcy Act, then we are going to be very vitally affected. I should like it to be left at that for the time being. Anyone going to bankruptcy has to make an assignment before he can take advantage of the compromise section of the Bankruptcy Act. We feel that that gives us some hold.

We would like to make further recommendations, and we would like the opportunity of working out some suggestions with the crown officers, if any suggested amendments are going to be made.

My whole position can be summed up by saying that we are backing up the position that we have worked out with the Toronto board of trade.

The CHAIRMAN: Are there any other witnesses who desire to be heard?

Mr. Stevens, will you make a recommendation as to further procedure?

Hon. Mr. STEVENS: I think, Mr. Chairman, what we ought to do—of course, we have got this before us yet; the bill is here. I do not know what we are going to do. If it is withdrawn, I should say that we ought to report to the House that in the consideration of this committee we received very important suggestions involving the amendment of this Act, and possible amendments to the Bankruptcy Act, and ask the House for instructions to give it consideration, because we have no instructions at present to do so. That could be done in an interim report and, in the meantime, the officers of the crown could confer with the gentlemen who are here this morning and any others, and could come prepared to suggest some definite matter that we could consider—amendments in a proper form.

Mr. BERTRAND: Would it not be appropriate to hear Mr. Reilley on this point?

The CHAIRMAN: What is the pleasure of the committee?

Mr. VIEN: I so move.

The CHAIRMAN: Mr. Reilley will make a statement as to the Winding-up Act which is also concerned in the matter. Mr. Reilley.

W. J. REILLEY, called.

The WITNESS: Mr. Chairman and gentlemen, I am rather at a loss to know what I can say under the circumstances. It is hardly appropriate for me to make any comments at this time on the suggestions that have been made. But if I may say so, from my experience of the last five years as Superintendent of Bankruptcy, there is, in my opinion, a very wide field to be looked into. I have, I may say, as probably the only official dealing with insolvency matters, received a great many complaints regarding the Companies' Creditors Arrangement Act. They write to me because they do not know who else to write to. I have to reply that it is not within my jurisdiction. But, nevertheless, they set out in full very clearly the difficulties and abuses that have arisen. I have also received at times similar complaints in regard to the Winding-up Act, and for that reason, the whole question, in my opinion, should be studied, because it is not desirable, I am sure, from the standpoint of the legal profession who largely have to deal with this, or more particularly the laymen as well who try to understand these acts, that we should have too many acts dealing piecemeal with one subject. Winding up, insolvency, bankruptcy and reorganization is all part and parcel of the one subject of insolvency. The Companies' Creditors Arrangement Act refers only to insolvent companies. Without presuming to intimate what can be done, I would say there is a problem which I think should be dealt with in a manner that would effectively deal with the whole situation.

[Mr. W. J. Reilly, K.C.]

By Mr. Vien:

Q. And it would take time to evolve such a scheme?—A. Not very long, perhaps.

By Mr. Plaxton:

Q. Have you had many complaints in connection with the operation of the Bankruptcy Act, Mr. Reilley?—A. Well, they are becoming less and less. There have always been complaints; that is, complaints come in in regard to matters which we are asked to make investigations into. I do not think I have had any complaints in regard to the general administration of the Act under our supervision and so on. The particular cases arise which I am asked to investigate in the nature of complaints.

By Mr. Vien:

Q. If a general reference were made giving this committee power to investigate the Bankruptcy Act, the Companies' Creditors Arrangement Act and the Winding-up Act at this session, would you be in a position properly to advise the committee in that respect at present?—A. Well, it would depend on how long the session is going to last.

Q. Let us assume that it would adjourn around the 1st of July. I do not know any more than you do about that, but it is a fair assumption, I think.

The CHAIRMAN: You are an optimist.

By Mr. Vien:

Q. Or say before the 1st of July. Would you think that the committee would have time to give proper attention to these matters?—A. I doubt if it could. I doubt if it could unless it were to meet every day and all that sort of thing, and get proceedings back and forward to parliament. I do not think it could hardly do it.

The CHAIRMAN: May I ask a question there? Is it the opinion of the committee that the Banking and Commerce Committee is the proper committee in which to deal with bankruptcy?

Mr. VIEN: I think it comes under this committee.

The CHAIRMAN: I am instructed that the last time the matter was under revision, it was referred to a special committee.

Mr. VIEN: A special committee?

Mr. MARTIN: That is what I agree with.

Mr. BAKER: There is power given by parliament to deal with this special request in this; why not then leave the general revision of the three acts until the next session, because it looks on the face of it to be too big a question to attend to this session. Would it be safe to go ahead with this item, or should it be put in with the others?

Mr. HOWARD: I would like to know what assurance Mr. Baker has that there will be a next session.

Mr. VIEN: At any rate, it will be for parliament to decide that. I think our report cannot be in other terms than what has been suggested by Mr. Stevens. I agree with Mr. Stevens that we have to report that this bill, whether it is withdrawn or not—

Mr. BERTRAND: It is withdrawn.

Mr. VIEN: It should be so stated. Mr. Bertrand, the sponsor of the bill, declares to the committee that he withdraws the bill. Is that correct?

Mr. BERTRAND: That is right.

The CHAIRMAN: Will you please repeat what is right?

Mr. BERTRAND: Well, I say, as I said before when we started, that I was ready to withdraw the bill, and I do so.

Mr. MARTIN: I think the bill has to be withdrawn in the House.

Mr. BERTRAND: I do withdraw the bill.

Mr. VIEN: Mr. Bertrand having moved for leave to withdraw his bill, I move that such leave should be granted.

Mr. McLARTY: Does not that have to be done in the House?

The CHAIRMAN: Yes, I think that should be done in the House.

Mr. VIEN: And we should report to the House that Mr. Bertrand—

The CHAIRMAN: —asks to withdraw the bill.

Mr. HOWARD: I second that.

Mr. VIEN: I think we should say in our report that in the consideration of this bill, before its withdrawal or before application for its withdrawal, representations were made by the people who have been here along the lines that we have heard; I think our report should embody all that, and that the committee has considered that it has not power under its order of reference to go into this matter without any further reference from the House.

Mr. HOWARD: Carried.

The CHAIRMAN: Carried.

Mr. MARTIN: Mr. Chairman, before the committee adjourns, I have a bill, Bill 124, which has been referred to this committee; and it would be a matter of great convenience if we could name a date. I suggest to-morrow morning.

After further discussion *re* adjournment, the committee adjourned at 12.55 p.m., to meet again on Thursday, June 9, at 10 a.m.

(This completes the evidence taken with respect to the subject-matter of Bill No. 26, "An Act to repeal the Companies' Creditors Arrangement Act.)

Mr. Doc
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Canada Banking and Commerce
in Standing Committee, 1928

SESSION 1938
HOUSE OF COMMONS

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 1



THURSDAY, JUNE 9, 1938

WITNESSES

- Mr. W. B. Scott, K.C., Counsel for Non-Tariff Insurance Companies licensed to do business in Canada, Montreal.
- Mr. J. A. Mann, K.C., Counsel for Insurance Companies, Members of the Canadian Underwriters' Association, Montreal.

ORDER OF REFERENCE

FRIDAY, June 3, 1938.

Ordered—That the subject-matter of the following Bill be referred to the said Committee:—

Bill No. 124, An Act to amend the Copyright Act.

Attest

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, June 9, 1938.

The Standing Committee on Banking and Commerce met at 10 o'clock a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Clark (*York-Sunbury*), Cleaver, Dubuc, Fontaine, Kinley, MacDonald (*Brantford City*), McGeer, Martin, Moore, Raymond, Stevens, Ward.

In attendance: Mr. J. T. Mitchell, Commissioner of Patents, Department of the Secretary of State; Mr. W. B. Scott, K.C.; Montreal; Mr. J. A. Mann, K.C.; Montreal; Mr. Roderick S. Kennedy, National Secretary, Canadian Authors Association, Montreal, and others interested in matters relative to the Copyright Act.

The Committee had under consideration on Order of the House dated June 3rd, referring to the Committee the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

Mr. Martin, sponsor of the bill, made a brief statement and moved that Mr. Scott be heard.

Mr. Dubuc suggested that owing to the absence of several members interested in the matter under consideration, the Committee adjourn its proceedings for a few days. It was agreed that the Committee proceed to hear representations from the witnesses present and postpone until a later date the consideration of said representations.

Mr. Martin's motion carried and Mr. W. B. Scott, K.C., counsel for non-tariff Insurance Companies licensed to do business in Canada, was called and examined. He filed copy of judgment in Underwriters' Survey Bureau Ltd., *comp.*, vs Massey & Renwick, *def.*

Witness retired.

Mr. J. A. Mann, K.C., Counsel for Fire, Automobile and Casualty Insurance Companies, Members of the Canadian Underwriters' Association, was called and examined.

Witness retired.

The Committee adjourned at 1 o'clock to the call of the Chair.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

June 9, 1938.

The Standing Committee on Banking and Commerce met at 10 a.m. Mr. W. H. Moore, the Chairman, presided.

The CHAIRMAN: Order, gentlemen; I am informed that we have a quorum. Bill 124, an Act to amend the Copyright Act.—Mr. Martin.

Hon. Mr. STEVENS: Can we have the bill?

Mr. MARTIN: The bill in its present form will go through the process of considerable amendment insofar as the sponsors are concerned, and I content myself at the outset merely with a statement of what is intended, namely, to give to the Commissioner of Patents, with an ultimate appeal to the Exchequer Court, the right to deal with abuses with respect to the ownership of copyright.

May I say at the outset that there is no intention whatsoever of interfering with literary and artistic work. Those who are interested from that standpoint may be assured that any amendments which they have in mind will be carefully made, because there is no intention of touching that class.

Now, Mr. Chairman, Mr. Scott, who is a barrister and solicitor from Montreal, is here, and he has had this matter in hand and I would ask that he be heard in connection with the bill.

The CHAIRMAN: Will you make a motion to that effect?

Mr. MARTIN: Yes. I make a motion to that effect.

W. B. SCOTT, K.C., appearing for a group of non-tariff fire insurance companies licensed to do business in Canada, called.

Mr. DUBUC: Mr. Chairman, seeing the importance of this bill and that there are so many members missing from the province of Quebec, I feel like moving the adjournment. This bill is very, very important, and I should think that a great many would be interested in it. I know there is quite a number in Quebec, and, if I am in order, I would ask you to adjourn.

The CHAIRMAN: Gentlemen, what is your pleasure?

Mr. MARTIN: Mr. Chairman, there are two difficulties in the way. On Tuesday we decided to meet this morning. We knew that this would be an occasion that would take a considerable number of the members of the House away, but there was no intimation that a request for an adjournment would be made this morning. In any event, the evidence will be taken down, and no decision will be reached this morning. Therefore, no one will be prejudiced and, in any event, as the session is drawing to a close, we are anxious to get the matter before us in the House if it is at all possible, and I would ask, having that in mind—

The CHAIRMAN: That we simply take the evidence to-day and have an adjournment at the conclusion of the evidence until next week? Does that meet with general approval?

Some Hon. MEMBERS: Yes.

The CHAIRMAN: All right.

The WITNESS: Mr. Chairman and gentlemen, I quite realize that anything that has to do with adding any additional clauses to the Copyright Act is a

matter involving careful consideration and study. I shall in my remarks, therefore, try to make them as brief as possible consistent with an explanation of the purpose of this bill.

As you know, Mr. Chairman, section 14 of the Copyright Act, as at present drawn, contains provisions whereby a compulsory licence for the issue of copies of a work may be ordered by the minister. The minister who has charge of this Act, of course, is the Secretary of State, and in his discretionary powers, and subject to the fulfilment of certain conditions, he has the right to permit a licence to be granted to a person to publish works where the author has failed to supply the reasonable demands of the Canadian market, or where he has not printed the works for use in Canada.

By the Chairman:

Q. Who are you representing?—A. I should have stated that before, but I am representing, Mr. Chairman, a group of non-tariff fire insurance companies licensed to do business in Canada.

J. A. MANN, K.C.: Is it not non-board companies, but non-tariff companies? Non-board companies may be tariff companies, but are not members of the Canadian Underwriters Association. Is that not correct?

Mr. MARTIN: I think we have to accept his explanation of the companies he represents.

The CHAIRMAN: Do you think the names of the companies represented should be placed on the record?

Mr. MACDONALD: Does he represent a class?

The WITNESS: It is a class, yes, of non-tariff companies or non-board companies who are interested in this bill.

The CHAIRMAN: I think we will put the names of the companies he represents on the record.

The WITNESS: Canadian Mercantile Insurance, Commerce Mutual Insurance, Canadian National Insurance, Sterling Insurance Company, Union Fire, Accident and General Insurance Company, Economical Mutual, Waterloo Mutual, Perth Mutual, Gore District Mutual, Stanstead and Sherbrooke, New York Fire, Merchants and Manufacturers, American Equitable, Canadian Alliance, Sussex Fire, Fonciere Fire, Wawanesa Mutual.

I was saying that section 14 of the Copyright Act, providing for compulsory licence when the reasonable demands of the Canadian market have not been met, was inserted in the Copyright Act in 1921 by parliament; and in 1923 by sub-section 8 of section 16 of the Act, these compulsory licence features were limited only to the situation where it was a Canadian author. In other words, compulsory licences are entirely a domestic matter, and, therefore, we do not run into any international complications resulting from our own inventions. This is a Canadian matter for the Canadian parliament to deal with.

The purpose of the present bill, as Mr. Martin said a moment ago, is to enlarge upon these powers which parliament gave to the Secretary of State, or to the minister, in 1921. Heretofore, of course, the situation has not really arisen because any author has been only too happy to meet the demands of the Canadian market for his work.

The present bill arises out of an application which was made on the 28th of April, 1938, to the Secretary of State asking him to grant a compulsory licence in connection with certain fire insurance plans and maps.

Before dealing with that I want to endorse emphatically every word said by Mr. Martin a moment ago, that it is not the intention of the sponsors of the present bill, in any manner, shape or form, to interfere with any artistic or literary works, as such.

[Mr. W. B. Scott, K.C.]

By Mr. MacDonald:

Q. Does the bill as drawn interfere with such works?

Mr. MARTIN: Yes, I think it does.

The WITNESS: Certain authors made representations to us after the bill had been printed, and pointed out that possibly upon construction of the present wording it might happen. It had never entered our minds that that might be the case, but my friend, Mr. Cuthbert Scott, has been in correspondence with the Canadian Authors' Association, and before this bill is finally dealt with I think that we shall be able to satisfy them, at least I hope to be able to satisfy them, because, if the English language is broad enough, we are willing to do that.

In the second place, I want to endorse emphatically everything Mr. Martin said a moment ago, that it is not the purpose of the present bill to interfere with any litigation past, present or future in the courts, and we are entirely agreeable, if necessary, to have any clause inserted in the bill saying, "nothing herein contained shall affect any litigation or judgment of the courts—"

By Hon. Mr. Stevens:

Q. Do you include the future? You said, "past, present or future."—

A. Insofar as a past judgment might have future effect.

By Mr. Martin:

Q. So that there will be no mistake, there is not any connection at all between this bill in its present form, or in the form of its proposed amendments, that is in any way affected by the judgment of the Exchequer Court?

—A. No, sir.

Q. They are two different matters?—A. Two entirely different matters. That dealt with infringements of certain photostatic copies made by somebody. This arises out of an application made to the Secretary of State on the 28th of April, 1938, and which on the 5th of May, 1938, a month ago, he was obliged to refuse on the ground that under the wording of the present section 14, dealing with compulsory licences, he had no jurisdiction to deal with the matter before him, and was unable to pronounce any judgment upon the merits of the application.

By Mr. McGeer:

Q. Who brought the action in the Exchequer Court?—A. It was brought by the Underwriters' Survey Bureau Limited which is owned and controlled by the Canadian Underwriters' Association.

Q. Who was the action against?—A. The action was against Massey and Renwick.

Q. Who are they?—A. They are a non-board or non-tariff company doing business in Toronto.

Q. Are Massey & Renwick, Limited, using photostatic copies of plans owned by the Underwriters' Survey Bureau?—A. The judgment of the Exchequer Court held that Massey & Renwick had bought or procured photostatic copies of these plans.

Q. Owned by?—A. The photostatic copies were made by a company known as the Commercial Reproducing Company, and they were infringements of the copyright of plans owned by the Underwriters' Survey Bureau Limited and the member companies of the Canadian Underwriters' Association.

Q. And Massey & Renwick, Limited company were really producing these plans for the non-tariff companies?—A. No, sir; just for themselves.

Q. But the non-tariff companies were customers of theirs, were they not?—A. No, sir.

Mr. KINLEY: They were insurance people.

The WITNESS: Certainly they were not for any of the companies whose names I gave to the chairman.

By the Chairman:

Q. What is the business of Massey and Renwick?—A. They are insurance people. I did not represent them in those proceedings. Colonel Biggar represented them.

Q. They are insurance brokers?—A. They are insurance brokers and managers.

By Mr. McGeer:

Q. In any event, that decision precludes the non-tariff companies from doing the same thing.—A. Oh, certainly, sir.

Q. And this bill, if you could get a favourable decision under it, would give you access to those plans, or plans in an analogous relationship to them, would it not?

Mr. MARTIN: That is right.

The WITNESS: Upon paying for them.

By Mr. McGeer:

Q. So that this legislation is intended to cure the decision of the Exchequer Court, or to relieve you of the limitations imposed by that judgment as non-tariff companies?—A. I must confess I cannot see it that way. If you let me explain, for a minute, I think I can satisfy you that that is not so. The application to the Secretary of State was refused, first, on the ground that under the present section 14, these copies of these plans had not been issued to the public within the sense defined by the Act; and, in the second place, that even if they were issued or published and a compulsory licence could be ordered, the present section 14 provides for not less than 1,000 copies of any work or reproduction under a compulsory licence irrespective of the relation 1,000 copies bears to the needs or demands of the Canadian market for that work.

You will understand, Mr. Chairman, of course, that "book" under the Act is defined to include maps, plans, and so forth.

Q. The point I was making was this: supposing that the amendment as you propose it had been in effect and Massey and Renwick had succeeded on an application to have access to those plans of which they used photostatic copies, there never could have been an action in the Exchequer Court because the Exchequer Court would have had no jurisdiction over the authority given under this proposed amendment?—A. My friend, Mr. Scott, points out that Massey and Renwick had not applied for a licence and offered to pay a royalty.

Q. Quite true, because there was no legal power; but had this amendment that you propose been in effect they would have done that, would they not?—A. If parliament saw fit to pass this amendment, and if upon making out a proper case before the Commissioner of Patents. We are going to propose that the Commissioner of Patents be substituted for the minister, and that there be an appeal to the court. And if the final court, the Privy Council or the Supreme Court finally decided that under the circumstances existing in Canada attaching to the use of these fire insurance plans which have been in general use by everybody for fifty-eight years, there was an abuse by the publishing company which had gradually acquired plans which had been in open sale for thirty years and made by Goad and not made by them,—if the court should decide that that was abuse, then under this bill as amended it would be possible for a person to apply for those plans and upon paying the same market price at which they are supplied to members—

[Mr. W. B. Scott, K.C.]

Q. So that this amendment proposes to at least open the way to make an application through the authorities named in the amendment to secure access to that which the Exchequer Court has at the present moment ruled is the property of the Underwriters' Survey Company, and not available to a competitor?—A. Yes, sir, and for this reason: the fire insurance business in Canada has been conducted since 1883 by two classes of insurance companies: first, the board or tariff companies, and, second, by the non-board or non-tariff companies.

By Mr. Kinley:

Q. The Mutual companies?—A. The Mutual companies. Prior to 1883 it was all a competitive business. Since 1883 it has been divided into those two classes.

In 1880 Charles Goad, an Englishman, came out to Canada and he started the idea of making these fire insurance maps. I do not know whether he took the idea from the British war office, the ordinance maps which are very complete and thorough, but be that as it may he did start in and from that time down to the death of Charles Goad in 1910—that is over thirty years—Charles Goad's plans were on open sale throughout the Dominion of Canada to everybody. They were bought by the tariff companies, by the non-tariff companies, by mortgage companies and by the municipalities, and so forth and so on. After 1910, after his death, he left three sons, and by various successive steps which would take too long to describe in detail here, the Underwriters' Association gradually acquired the right in this plan-making from the Goad sons. The Goad sons made them for a while, but gradually the Underwriters' Association got control of these plans by purchase, and so on, from the Goad sons, and they set up their own plan making department until 1931 when the final step was completed whereby the Underwriters' Survey Bureau Limited, which is a joint stock company, completed their chain of title to these plans, as was found by the Exchequer Court.

The life of these plans—I am not an insurance man, but I think any practical insurance man will bear me out in this, that the life of these plans is from twenty to twenty-five years. Goad died in 1910. These plans were all on open sale at that time. These plans were made from original surveys made by him. The life of these plans is known to be twenty-five years, so it becomes obvious that the situation really only became acute in Canada from 1930 to 1935. Of course, that varies to a certain extent with the growth in a municipality. You take a little village like Lennoxville, in the province of Quebec, there is not much new building there and not much increase in population, while in other places there is a big increase in the population.

By Mr. Martin:

Q. In the United States are these plans made available to the public?—A. In the United States the fire insurance business is conducted on exactly similar lines to what it is in Canada. These plans I may say, gentlemen, are just as necessary tools of the trade in the fire insurance business as law reports are for barristers or as a carpenter's tools are to his trade. I think any creditable insurance man will agree with me on that. And for the last 58 years every fire insurance company man in Canada, tariff and non-tariff, has and is still using these plans and is relying on them.

By Mr. Kinley:

Q. Who keeps them up to date?—A. The Underwriters' Survey Bureau.

Q. They own them and keep them up to date?—A. Yes.

By Mr. Martin:

Q. Would you mind going back to the point I raised and explain the situation in the United States?—A. In the United States the business is conducted in exactly the same way as it is in Canada and these plans are available to the general public, and I have here in my hand a letter from the Sanborn Map Company which I will read. It is dated at New York City, April 19, 1938:—

W. J. REYNOLDS, Esq.,
Corroon & Reynolds,
92 William Street,
New York City.

My dear Mr. Reynolds,—In answer to your inquiry of the 13th instant, and in accordance with our conversation of to-day, we wish to advise you that the Sanborn Map Company is a privately owned corporation engaged in business for profit supplying copyrighted map service throughout the United States.

We solicit orders from the entire fire insurance fraternity, including stock and mutual board and non-board companies and their agents. We also have many customers amongst municipalities, banks and mortgage companies, and public utilities.

Trusting this answers your inquiry to your satisfaction, I am,

Yours very truly,

(signed) R. W. HOLLAMAN,
President.

By Mr. McGeer:

Q. Supposing the Sanborn company should decide to quit business in the United States and you wanted to continue the service, you would have to purchase these rights, wouldn't you? You would either have to do that or you would have to go out and compile a new set of plans for yourself at very considerable expense?—A. Of course, I cannot speak for the whole of the United States, Mr. McGeer, but I suggest it would not be practical or advisable for any one or two, or ten or twelve companies in the United States to undertake to re-survey every city, town or village in the United States.

Q. They would have to do it every 20 or 25 years?—A. Not the original survey. That is the whole point. You start on your original survey and the main features are preserved more or less for all time, unless that city or town burns down. It has to be added to, and re-surveys are made and re-prints based on these revisions are issued from time to time; that is quite a different matter from starting in de novo. For instance, take the provinces of Ontario and Quebec alone, there are in existence at the present time 28,651 sheets of plans—28,651 prints of plans—of which only some 654 (it is in the 600's) have been made from original surveys made by the Underwriters' Survey Bureau Limited, or by the member companies of the association; that is, 654 only have been made from original surveys of the bureau and the tariff companies, and 28,671 are based on the original surveys made by old Charles Goad; so that for all practical purposes at the present time the whole thing is in the hands of the underwriters and a few insurance men associated with them. Making a re-survey is not a practical proposition; first from the standpoint of the time involved, and secondly from the standpoint of the expense involved; for any new group of companies to undertake a re-survey of every Canadian city, town or village, even in the provinces of Ontario and Quebec alone, leaving out the western provinces or the Maritimes. I haven't got any figures with me with respect to those provinces.

[Mr. W. B. Scott, K.C.]

By Mr. Kinley:

Q. Do you know the consideration that was paid for these plans by the underwriters? What consideration entered into the purchase of this copyright?

—A. What did they pay?

Q. Yes.—A. I cannot tell you that, Mr. Kinley.

Q. It all goes into the cost of insurance, doesn't it?—A. Certainly, sir.

Q. Yes?—A. And, of course, if these plans are duplicated the public will ultimately have to pay for the cost of such duplication.

By Mr. Martin:

Q. Mr. Scott, you are saying by that, that it would not be possible for the non-tariff companies to make new plans—not duplicates, but new plans—because the cost would be prohibitive?—A. It would be prohibitive.

Q. That would mean that they would have to go out of business?—

A. They would have to go out of business. If you take just Ontario and Quebec alone, there are 28,000 separate sheets—

Q. That is a plain statement.—A. Take 28,000 sheets and, say \$10 a sheet; there is \$280,000; and if you multiply that by 50 you see where you go to, because you would want about 50 sets for each city, town or village. Take Ottawa; there are 126 sheets. The Ottawa situation illustrates very emphatically how this situation has arisen. The Ottawa sheets or plans, the whole 126 of them, go back to the original surveys made by Charles Goad in his first work. They were revised by Charles Goad in 1909 and by his sons in one or two succeeding years. Revisions were brought out by the bureau in 1928, I think, and in 1932, and re-prints in 1925 and 1926. The point I am making there, sir, is that it is based on these original works of Charles Goad, his original surveys; and these non-tariff companies never realized perhaps that they were negligent—if you like—in that they did not realize until 1935 when this action was taken that for all time it was the purpose of the association to prevent these maps which were in general use from being generally used.

By Mr. Kinley:

Q. The premiums of non-tariff companies are less than those of the tariff companies?—A. Yes.

Q. Is not that because you use a lot of equipment belonging to these other companies? For instance, their adjuster makes a report and you accept it?—A. No, I think we have a reason for that, the non-tariff companies are able to do business more cheaply because in the first place higher commissions are paid by tariff companies than are paid by non-tariff companies doing fire insurance business in Canada—

Q. You do not re-insure, I suppose; you carry all your own risks and do not re-insure in outside companies. What is the difference whether they are Canadian companies or not?—A. Their overhead is less, and their commissions are less—these over-riding commissions.

Q. Let us suppose that I have insurance with you and insurance with a tariff company, and that I have a loss; would you not say, we will accept the adjustment of the tariff company's man—is not that what you usually do? Is that not why you operate at less expense?—A. I could not tell you—

Q. Is not that what they usually do; if you have a loss and if the tariff company sends their adjuster in on that loss, don't you usually say, we will accept that?

Mr. MARTIN: That is not true, is it?

The WITNESS: I do not know that it is so.

Mr. KINLEY: I know it is true. I have had some experience in this and I know it is true. They will say, what does your adjuster say, we will accept that. That is what they say many times.

By Mr. Martin:

Q. How many tariff companies are there which are distinctly Canadian?
—A. There are only three, Mr. Chairman; only three tariff companies that are actually owned by Canadian capital out of a total of some 164 companies.

By Mr. MacDonald:

Q. Out of a total of 164 companies operating in Canada?—A. Yes, only three in the fire insurance business are wholly owned by Canadians; but in the non-board companies there are 71 out of 73 wholly owned by Canadian capital.

By Hon. Mr. Stevens:

Q. I suggest that there should be some way by which we could focus our attention on this amendment to the Copyright Act rather than getting into an argument about board and non-board companies. Do I understand the situation to be this, that you do not challenge the right of the owners of the copyright to all the privileges which are theirs by law?—A. Quite right, sir; certainly.

Q. Then, in the second place, do I understand your position to be this: That anyone—an insurance company or a mortgage company or a real estate company, or anyone else—who desires to purchase one of these maps should be permitted to do so as long as they pay for it at the same rate as is paid by other customers? Is that the whole issue in this thing?—A. Briefly put that is it, sir. And, if the committee will allow me—

By Mr. Martin:

Q. That is the definite issue, isn't it?—A. Yes. And if the committee will allow me, in a moment I will explain the reason why—

By Mr. Kinley:

Q. Well, it seems to me that you are asking for general legislation for a special purpose; you want to change the general law to accomplish one purpose?—A. That, sir, will be a matter for the courts after hearing the evidence to decide; whether under the circumstances now existing in Canada with reference to the conducting of fire insurance business it is an abuse for these board companies now to make these plans inaccessible by purchase, loan or otherwise to anybody engaged in the business.

Q. You are here now in respect to your company, which is also a public interest; I quite agree there is something in that. How far should you invade the rights of other people in order to do that? There is such a thing as property rights in these matters, you know.—A. For this reason, Mr. Kinley; I think it is perfectly obvious to anybody who looks into this; I think it is perfectly clear that if these plans are definitely and forever to be rendered inaccessible to any one not a member of the association for any consideration—that is, that they are not to be made available to the non-board, non-tariff companies—it will mean that they either have to go to the expense of preparing sets for themselves or go out of business entirely.

Q. Or, pay for the service?—A. I should like to make it a little more clear. The tariff companies are perfectly willing to supply these plans to any body who joins the association, but to join the association they say you have got to bind yourself to charge identical premiums.

Q. Yes?—A. And to pay identical commissions throughout Canada. And I suggest, sir, that this is the first time—and I have looked through all the books—this is the first time either in England, the United States or elsewhere, that any owner of a copyright—and I am not challenging this, Mr. Stevens—

[Mr. W. B. Scott, K.C.]

I am not challenging their ownership in this copyright—this is the first time that any owner of a copyright has sought to force persons who choose to purchase them to enter into a contract not to do certain things.

Q. And, what was that?—A. To quote identical premiums to the public.

Q. Didn't he say this; we have these plans for the use of those who are willing to help to pay for them and who join the association?—A. And who join the association; and agree in joining the association that they will charge an identical scale of rates to the public and pay identical commissions. That is the point, sir.

Q. Not necessarily higher commissions; uniformity of commissions; but not necessarily higher commissions?—A. No.

Q. There may be some virtue in that?—A. May I say this, Mr. Chairman, that this parliament has always taken the stand in its legislation, in the Criminal Code and in the Combines Investigation Act—it has always looked with a favourable eye upon competition in insurance. Section 498 of the Criminal Code specifically mentions insurance; as to its being an offence to agree or arrange with any other person to in any way prevent—it makes it an offence to prevent or lessen competition in the price of insurance upon person or property. The Combines Investigation Act also mentions insurance, particularly.

By Mr. Martin:

Q. I am rather anxious to get back on the line that Mr. Stevens sought to bring you to, let me do that by asking you another question. First of all, you do not wish to interfere with the copyright of these plans; that is right, isn't it?—A. Yes.

Q. Secondly, you are not asking in this bill to have any use of these plans?—A. No, sir.

Q. Certainly, you are asking merely that we put into the Copyright Act the provisions that are now extant in the Patent Act?—A. Yes, sir.

Q. Giving to the Commissioner of Patents the power; not, to give you the plans?—A. That is quite right.

Q. But merely to determine generally in respect to any copyright whether or not there exists an abuse of the copyright; is that right?—A. That is quite right, sir.

Q. And from that decision, as to whether or not there is an abuse, there is to be an appeal to the exchequer court?—A. Yes.

Q. That is the issue, isn't it?—A. That is the issue. And, I say that this bill is based upon the provisions of the Patent Act for this reason; that it is quite true there is a difference between copyright and patent in the ordinary case of copyright. Two people could set to work to write a history of Ottawa and arrive at the same result by independent means; whereas, in the case of a patent you can only have one valid patent in existence at the one time. But my submission is with regard to the peculiar set of facts attached to the history of these fire insurance plans which have been used by everybody for 58 years is that that is not so; that the use of these plans and the preparation of these plans, which have now been acquired by the Underwriters' Association, is for all intents and purposes a situation wholly analagous to that of a patent, because it is impossible on account of the prohibitive cost and the length of time it would take for anybody to reproduce these plans—

By Hon. Mr. Stevens:

Q. Who owns the copyright now?—A. According to the judgment of the exchequer court—

Q. I mean what is the name of the company who owns the copyright?—A. Well it has been decided to be the Underwriters' Survey Bureau Limited and the 164 or so member companies of the Canadian Underwriters' Association.

By Mr. MacDonald:

Q. Who was the defendant in that action?—A. Massey and Renwick Limited.

Q. Who was the complainant?—A. The Underwriters' Survey Bureau Limited, a plan-making company owned and controlled by the association, together with some 164 members of the association.

Q. Have you a copy of the judgment?—A. Yes, sir. It is printed in the Dominion Law Reports.

Mr. MACDONALD: I think that should be filed, Mr. Chairman.

The CHAIRMAN: Filed, but not necessarily printed.

Mr. MACDONALD: It seems to be a rather long document and it is probably not necessary to have it printed.

By Hon. Mr. Stevens:

Q. Am I right in this; there is a company who owns this copyright?—A. Yes, sir.

Q. What is the name of that company?—A. The Underwriters' Survey Bureau Limited.

Q. That is an incorporated body?—A. Yes.

Q. And it owns the copyright?—A. Jointly with some 164 members of the Canadian Underwriters' Association; or, the Canadian Underwriters' Association.

Q. Are these 164 individual companies named as part owners?—A. They were the complainants.

Q. I am not asking you about who were the complainants, I am asking you about the ownership of a copyright?—A. The judgment declared that that company and these named complainants, were the joint owners of that copyright.

Q. And they issue these plans for a certain sum of money?—A. Yes, I have their catalogue here.

Q. They set a published price and they issue them?—A. They issue them. Here are their prices, ranging from \$10 to \$15 and \$28 and so on.

Mr. KINLEY: Under the present law they can do that.

Hon. Mr. STEVENS: Just a moment, please.

By Hon. Mr. Stevens:

Q. Of course, they are entitled to have something to pay for the cost of production?—A. To pay for the cost of production, and their overhead and so forth and so on.

Q. And your claim is that you should have the right to purchase these at the same rate as is made to these board companies?—A. As a matter of fact, when we appeared before the Secretary of State I had in my pocket orders in writing which were submitted to the Secretary of State, for plans for the cities of Montreal, Quebec, and so forth—different points throughout Canada—and my clients were willing to pay for these plans at whatever price the member companies paid for them.

Q. And your clients were refused the right of purchase?—A. We were refused the right of purchase, because under the present wording of section 14 these plans were held to be not issued to the public generally, not published to the public generally; they were only circulated among their member companies and amongst the agents who represented these board companies. Perhaps I might answer your question better by giving an illustration. An application was made by a company known as the Mississquoi & Rouville Fire Insurance Company, which was incorporated in 1934. This company applied for a plan for Noranda and the surrounding districts. They applied to Underwriters' Survey Limited for a plan comprising about three sheets covering the town and the surrounding locality, and Underwriters' Survey Limited undertook to supply these plans at

[Mr. W. B. Scott, K.C.]

a cost of somewhere in the neighbourhood of \$15 a sheet and they went ahead and made 60 sets of plans. Of this number 22 plans had been distributed by the bureau company to member companies and to agents at Noranda—there were seven agents at Noranda—and 15 member companies. The remaining 38 were in stock and the bureau refused them, and, of course, that was their contention. They could have sold them to us. We could have taken the unused sets of plans, 38 in number, which they had covering Noranda and the district and which they had in their cupboard, but this they were not willing to do for companies not members of their association, unless we joined their association and undertook to quote identical premiums and to pay the same commissions as did member companies.

By Mr. MacDonald:

Q. With regard to this action, the judgment was that the copyright had been infringed, I take it?—A. Yes.

Q. Does this bill propose to amend the Copyright Act so that the court might have given a judgment in favour of your company?—A. No, sir; most emphatically not.

Q. Isn't that what it comes down to?—A. No, sir.

By Mr. Martin:

Q. Is not that the situation?

The CHAIRMAN: Let Mr. MacDonald finish his question.

By Mr. MacDonald:

Q. Was not that the purpose of the bill?—A. The purpose of the bill is this, that if the Commissioner of Patents and the final court of appeal should decide that the withholding of these plans, the refusal to sell these plans to meet the demands of the Canadian market, constituted an abuse, then the Commissioner of Patents could order that copies be sold at a fair rate of profit to the producer, or could permit the licensees to reproduce these plans to be issued to those desiring them at such rates as would be prescribed.

Q. Probably it would be fairer to say that if this bill as amended is passed then the complainants could not have taken this action against your companies?—A. Yes, sir; they could have taken that action.

Q. But they will not be able to take a similar action if the bill is amended?—A. Yes, sir. That action was taken because Massey & Renwick Limited had bought from the Commercial Reproducing Company of Montreal, who engage in the printing of all kinds of material of this sort—

Q. If you amend the bill then you could make your application to the Commissioner of Patents; is that correct?—A. Yes, sir.

Q. And he could order the holder of the copyright to provide you with plans.

Mr. MARTIN: Yes, if there is abuse.

Mr. MACDONALD: Just a moment. He could order the holder of the copyright to provide you with plans to deliver to you all the plans which were dealt with in the exchequer court?

The WITNESS: No, sir.

The CHAIRMAN: By paying for them.

The WITNESS: The complainant dealt with in the exchequer court was that they were infringing by making copies of this work.

Mr. CUTHBERT SCOTT: Perhaps I could answer that question. If this bill is passed it is not going to affect the judgment of the exchequer court in any way, because the defendants will still be liable for damages for infringement;

but in future if anybody wants plans and makes an application to the minister—assuming this amended bill passes—and satisfies the minister that there has been abuse; then, on payment for the plans on terms which the minister thinks fair and just, they will be able to get them.

By Mr. MacDonald:

Q. Is it not so that if the bill is passed that the plans the copyright of which you are infringing can be obtained by an application to the Commissioner of Patents?—A. No, sir; only if the commissioner after hearing the parties comes to the conclusion that a class of persons—the non-board companies if you like—have been unfairly prejudiced by reason of the refusal of the owner of the copyright to “purchase, loan, hire, license or permit use of the work.”

By Hon. Mr. Stevens:

Q. You are not arguing at all that anyone should have the right, but only if there is a just complaint?—A. No, sir.

Q. This is a distinct infringement which anybody ought to be punished for?—A. Yes, sir; certainly. I go further; by this bill I do not say that anybody who goes to the Commissioner of Patents and says I want to publish this work should have the right to do so. I do say though that if he satisfies the commissioner at a hearing of all the parties and cross-examination of witnesses as well, that a class of persons has been unfairly prejudiced by the conditions attaching to the use of these plans, and if that case is made out, then the Commissioner of Patents and the courts have the right to say, in these particular circumstances we find that it constitutes an abuse to the public, and to this class of persons; and they will provide appropriate remedies.

By Mr. MacDonald:

Q. Going back to my question: The judgment of the exchequer court declared that you were infringing the copyright. That is true?—A. Yes, sir.

Q. Your clients?—A. They were not my clients.

Q. Well, are not Massey & Renwick your clients?—A. No, sir; Colonel Biggar represented them in that case.

Q. I see. Is there any doubt that if this bill is amended Massey & Renwick will be able to go to the Commissioner of Patents, and if they make out a satisfactory case they will be able to use these plans; is that correct?

Mr. KINLEY: By paying.

Mr. MACDONALD: By making payment; and the exchequer court will then not be able to say, as they said in this judgment, that that company are infringing a copyright; isn't that correct?

The WITNESS: I do not follow you.

Mr. MARTIN: Is this not the situation? What has happened? There has been an action in the exchequer court involving the ownership of these plans; that is the sum and substance of it—infringement.

Mr. MACDONALD: It is infringement of the copyright.

Mr. MARTIN: And the court has declared that these plans have been infringed. That is the judgment of the court. Now, this group comes to parliament and asks that this Act be passed. Now, what is this Act? This Act presupposes ownership in the parties adversely affected. It presupposes ownership, which is the sum and substance of the judgment; and all that they are saying is what common law presupposes, that a copyright does not mean the right to abuse the copyright. The fact that a man owns a copyright does not give him the right to excessive use or abuse; and the machinery here proposed

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is simply to ask that the Commissioner of Patents determine whether or not there is abuse, having in mind the interest of the general public. Now, that is all.

By Mr. McDonald:

Q. Is it not so that if this judgment had been directly opposite to what it is, these people would not be before parliament asking to have the Act amended?

Mr. MARTIN: That may or may not be, but that does not matter. Undoubtedly, this judgment has brought the problem before us, but it does not alter the situation.

The WITNESS: To answer that question, and I am glad you raised it, no matter if Massey and Renwick had won that case, or if they should win it in the Supreme Court, that will not make these plans available to the Canadian market. If Massey and Renwick should win that case, it will not make these plans purchasable at the catalogue price.

Mr. MACDONALD: No, but Massey and Renwick have not infringed them, if they win the case, and any other companies can do the same as Massey and Renwick have done.

Mr. MARTIN: In any event, Mr. Chairman, we are dealing with a general principle, and it is true that the witness' evidence has brought the problem in respect of a particular case before us. But the principle involved, as stated by Mr. Stevens very succinctly, is this: are we going to allow to the owner of a copyright the right to use that copyright in a manner that might be regarded as abusive and as not in the interests of the general public? Also what steps are we going to take to arrest the employment of that abuse? Now, that is the issue, and whether or not we agree that Mr. Scott's companies should have these plans or not, I think we should determine whether or not we are going to accept that principle because it might apply to many instances other than the particular one before this committee.

Mr. KINLEY: I might have a piece of property and it might be in the public interest to walk across it; but it is still my property, and I should think my right in that property should be preserved.

Mr. MARTIN: That can be taken care of by appropriation proceedings.

The CHAIRMAN: Supposing we allow Mr. Scott to finish his statement?

The WITNESS: I am not an insurance man, but it is perfectly obvious that if these plans which are now rapidly reaching the stage of obsolescence are no longer procurable by the non-board or non-tariff companies, that they have either got to join the association or discontinue business in Canada.

Of course, the business of the non-board companies has been increasing of recent years. It is now twenty-seven per cent of the total business in Canada, or \$11,000,000, as against the tariff business of \$29,000,000 or 68 or 69 per cent, according to the last published returns. Ten years ago the business of the tariff companies amounted to only some 15 per cent of the total Canadian business. It has now reached 27 per cent.

Mr. KINLEY: You mean of the non-tariff companies?—A. The non-tariff companies, yes.

Q. Does that include the mutuals?—A. No. They come to about 4 or 5 per cent, including the American mutuals and Lloyds.

Q. Is there a case pending in the courts dealing with this very matter?—A. Yes; there was this case against Massey and Renwick, and there was a case taken against four or five other defendants, and those cases were left in abeyance pending the decision in the Massey and Renwick case. Those other cases are pending.

Q. You will be legislating these people out of court if you get this bill?—

A. No, sir.

Mr. CUTHBERT SCOTT: If they have infringed in the past they would be liable to damages.

The WITNESS: The Patent Act provision is as follows:—

Section 65:

The Attorney-General of Canada, or any person interested, may, at any time after the expiration of three years from the date of the granting of a patent, apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder, and asking for relief under this Act.

(e) If any trade or industry in Canada, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence or use of the patented article, or to the using or working of the patented process.

By Mr. Kinley:

Q. Is there anything in this Patent Act that says you must supply the public with the goods, that you cannot keep them back?

Mr. CUTHBERT SCOTT: If it is a process patent, there is, yes. There are two different types of patents.

Q. There is an obligation for him to put it on the market?

The WITNESS: Yes, if a man patents an invention and does not make that invention available to the public.

Q. Suppose I have an invention on an engine, do I have to give it to every man who makes an engine?—A. In certain circumstances, you do. If he makes out a case whereby public requirements are not complied with, he can make an application to the Commissioner of Patents in just the manner I have presented here.

By Mr. McGeer:

Q. Were you through with your presentation of the provisions of the Patent Act?—A. There is still the question of an appeal.

Mr. CUTHBERT SCOTT: Did I explain that to your satisfaction, Mr. Kinley? The Commissioner of Patents is here.

Mr. KINLEY: The public interest, of course, is paramount, but another question arises, and that is whether these non-tariff companies who do business cheaper are not using the services of the other companies for which they do not pay. Now, I know that usually the non-tariff man will come along and look at your policy and say, "What rate are you paying?" And he will go under the rate and get the business. I am in favour of that. I have insurance with both. But then you have a loss, and you come in and you say, "I have had a loss, and that is the first one." "Well," he will say, "we will accept the adjustment of the tariff men." The tariff men must pay for that. How many services do you have by reason of the organization set up by the tariff companies where you invade their rights and where you do not have to pay?

Hon. Mr. STEVENS: Mr. Chairman, if we are going to go into the whole question of the merits of non-board and board companies, then I think we should do it under a study of the Insurance Act. I have very definite views on the subject, and I know a little about it. I cannot bring myself to a discussion of that under this amendment to the Copyright Act.

Mr. MARTIN: Hear, hear.

Hon. Mr. STEVENS: Because the thing narrows down, in my opinion, to this: it is the same principle as is involved in the question of the issuing of patents which are not used, or the issuing of patent rights in Canada which are

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used to exclude goods from coming into Canada. There is the same general principle. The point with which parliament is concerned is this: if an owner of a copyright, by virtue of his ownership, is refusing to sell that or allow others to use that instrument, whatever it may be, to the detriment of public welfare, then if there is a danger of that, obviously it is the duty of parliament to provide the machinery which will enable public interest to be protected.

I think it is a mistake, frankly, for non-board companies to come here at all and talk about this. I think it should have been brought here as a principle involved in the administration of the Copyright Act. And, frankly, I am in favour of this bill for the same reason that I favour the curbing of the control of patents or the controllers of patents having to do with the exclusion of goods from this country, as I have discussed in parliament before, but which I will not bring in here. But it is the same principle, and I think if we get into a discussion on the merits of the board and non-board companies we are going to get into a field where we will have a very wide difference of opinion. If you are going to come to a just conclusion, you will have to explore a very widespread and intricate business.

I would suggest, Mr. Chairman, with due respect, that we confine ourselves to the principle that is involved.

Mr. KINLEY: The principle is an invasion of individual rights and how far it should go. He has a catalogue price there, the price that these plans were sold for in Canada during the last number of years. Now, the question is if they are sold at this price, is the turnover big enough so that they are not sold at a loss by the people who own them.

I think public interest comes first, but we have in this country a feeling that if a man is right he should not be overruled because four or five men want to overrule him. His right should be his right by virtue of being right and not by virtue of a lot of people wanting to take it away from him.

Mr. MARTIN: Mr. Chairman, I think we have finished with Mr. Scott, and we might go on to the next witness.

The CHAIRMAN: Have you finished with your statement, Mr. Scott?

The WITNESS: Yes. I might mention, as a matter of fact, that the membership in the Underwriters' Association is a changing membership, so that it is not always the same people who are members.

By Mr. MacDonald:

Q. Is it not an incorporated company which owns the copyright?—A. Since 1937. The bureau and the member companies, who are joint owners with the bureau, were incorporated by letters patent in 1937. Prior to that, it was an unincorporated body. Sometimes a company will be busy for ten or fifteen years and then they will retire and take their whole stock of plans with them.

By Mr. Clark:

Q. You mentioned the amount of business as \$11,000,000 and \$29,000,000. Does that refer to the premiums?—A. That is the premium income, yes, sir. The total for Canada is about \$43,000,000.

By Mr. Kinley:

Q. Mr. Scott, the insurance business today is highly competitive?—A. It is competitive, yes, sir.

Q. Highly competitive?—A. It is competitive, and although it is not for me to suggest anything, I think it is a good thing it is competitive, for the public benefit.

Q. But it must be fair competition, everybody standing on their own legs?—A. Yes. The recent figures in the Blue Book show that for the last four or five years the fire insurance companies have been doing very well in Canada.

Q. They have?—A. Yes. The Blue Book shows that they have been doing very well; but the expense ratio of these British companies is a higher expense ratio than that of the non-board companies.

Q. You said that these non-tariff companies were Canadian companies largely?—A. I said 33 out of 71, sir.

Q. But all of them re-insure their risks?—A. I suppose.

Q. With foreign companies?—A. Well——

The CHAIRMAN: Have you any further witnesses?

Mr. MARTIN: No, I do not think so.

Hon. Mr. STEVENS: Mr. Chairman, I think it is a mistake to get into an argument about non-board and board companies; but I think in justice to the board companies, as their counsel are here, they should be heard.

I told Mr. Mann that personally I am inclined to favour the bill, but I will move that they now be heard.

Mr. MARTIN: Mr. Chairman, the 'Canadian Authors' Association is represented here, and that association wishes to make some representations.

The CHAIRMAN: Shall we hear the Canadian Authors' Association first, or hear Mr. Mann?

Hon. Mr. STEVENS: I think at this stage, if I might suggest it, having heard Mr. Scott, we ought to hear Mr. Mann.

The CHAIRMAN: Yes.

J. A. MANN, K.C., representing the fire, automobile and casualty insurance companies, members of the Canadian Underwriters' Association, called.

The WITNESS: Mr. Chairman, there has been quite a long discussion on this subject, and I am going to try, if it is humanly possible, to limit my remarks to the specific issue that it before this committee.

By the Chairman:

Q. Will you please tell us whom you represent?—A. I represent all of the fire, casualty and automobile registered companies in Canada who are members of the Canadian Underwriters' Association which is composed of three branches, namely, fire, automobile and casualty, numbering some two hundred companies.

The discussion up to this moment has centered itself solely and only upon plans. The question of the rates, rate manuals, specific ratings and rating works of the three branches of this association have been carefully untouched and unconsidered.

These ratings, rate manuals and rate books, speaking in general terms, were also the subject of the litigation to which Mr. MacDonald and Mr. Kinley referred.

By Mr. Martin:

Q. May I point out that in the memorandum, copy of which I think I gave you and which has been circulated among the members of the committee, at page 14 that point is specifically dealt with.—A. Which memorandum is that?

Q. A memorandum prepared by Mr. Scott.—A. Of course, I have had no time to examine that memorandum. You will appreciate that.

The CHAIRMAN: Gentlemen, I suggest we allow Mr. Mann to make his statements in his own way.

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The WITNESS: Mr. Chairman, with the greatest respect for the tremendous ability of my very old friend, Mr. Stevens, I am prepared to say, and I am taking the liberty of saying it, that with the exception of Mr. MacDonald and Mr. Kinley, the point involved in this proposed amendment has never been touched, considered or even thought of before the committee.

The CHAIRMAN: It might have been thought of.

The WITNESS: Well, they did not express their thoughts. I am afraid Mr. Stevens, in his remarks, has completely over-run or over-shot the point entirely. My friends and the whole of the members of the committee, if they are advised, and if on the other hand they personally understand what copyright is, will admit that copyright is property; that there are two classes of works, works copyrighted which have never been published, and works which have been published. When I say "published," I mean exposed to the public for sale within the meaning of the provisions of the present Copyright Act of 1921.

The fire insurance plans and maps, as well as the fire insurance rates have been promulgated by the Canadian Underwriters' Association, the plans, through their plan department, which became incorporated in 1917, the rates by the rating committee of the association, automobile by the automobile branch, casualty by the casualty branch, and fire by the fire branch. These rates, rating material, rating manuals and plans have been built up at a cost of something in the vicinity of \$15,000,000. The question of how much they cost may not matter, except from this point of view; that it will indicate to the committee why, during the course of fifty-eight years, as my friend, Mr. Scott, says, the non-board companies—and I use the words "non-board companies" as meaning companies who are not members of the Canadian Underwriters' Association—have consistently, and particularly since 1917, acquired copies of all plans and rating material, taken those copies to reproducing companies, had them photographed and photostated, and then used and took unto themselves the benefit of the gigantic expense that we incurred, that is, the Canadian Underwriters' Association.

My friend, Mr. Scott, has this disadvantage; that he was not in the litigation, and I am not going to speak of the litigation except in so far as it affects the principle of this bill. But the principle of this bill is an attempt to pirate or expropriate private property, and it is nothing more or less than that.

Up to March 1917, Charles E. Goad, himself up to 1911 when he died, and his sons up to 1917 when they practically ceased plan making, were making plans for the insurance companies, fire insurance companies, in fact, all companies, it did not matter whether they were board or non-board companies. And they were selling them in exactly the same manner as the Lloyd Map Company to-day, the William Bonnel Company, the Provincial Survey Company and the Canada Atlas Company which makes maps for insurance companies if they want to buy them to-day. The Canadian Underwriters' Association bought its fire insurance plans from the Charles E. Goad Company. My friend, Mr. Scott, if this were 1910 or 1911, could go to the Charles E. Goad Company and buy their maps exactly the same as they can buy them from four Canadian companies I mentioned, and from whom they can order and buy them to-day if they want to. And I just put before the committee an example of fire insurance plans made by these map companies, by original surveys—I hope they are not copies—almost identically the same as the maps and plans made by the plan department of the Canadian Underwriters' Association.

It is open to-day, Mr. Chairman, to the non-board companies to make their own plans, to go out and make original surveys, to chain the ground and to produce the identical thing, if they can get as skilful engineers as we have. And that is the distinction between the Patent Act and the Copyright Act. There is nothing in this world to prevent an independent lot of engineers going out and producing the identical thing that we produce, provided they produce it by original work and original labour.

In connection with the Patent Act, as Mr. Mitchell well knows, you cannot go and produce the same thing, whether you produce it by original labour or not. If you produce a thing that is patented and you use it, then, whether you produced it by original labour or not, you are infringing that patent. That is the distinction, because patent is a monopoly, while copyright is property. That is the distinction, Mr. Chairman.

By Mr. Kinley:

Q. Did you say that any person could buy a Goad plan up to 1910?—A. Up to 1917, and did buy it.

Q. And can buy it to-day?—A. They might get a licence for the publication of the Goad plans up to 1917. They bought Goad plans up to 1917.

By Mr. Raymond:

Q. Do you pretend that there is no abuse on behalf of the Canadian Underwriters' Association?—A. Absolutely not.

Q. If there is no abuse, you should not fear this Act because this Act will only apply if there is an abuse.—A. But, Mr. Raymond, here is the position: it has been stated before this committee that it is the general principle of this Act which is involved. But what I say is this, that the only works of any author or of any owner of copyright to which the public is entitled are works which have previously been offered to the public for sale. There never has been a plan of ours sold. There is no price on them; they are circulated solely and only for the purpose of the business of the Canadian Underwriters' Association membership.

By Hon. Mr. Stevens:

Q. Were they not sold up to 1917?—A. Not our plans.

Q. No; the plans that are the subject of this copyright. They were sold right up to 1917?—A. Absolutely.

Q. To the public, the insurance companies, mortgage companies, real estate agents, and so on?—A. That is what I said a minute ago. They were sold, and if my friend wants them he can make an application, if they were in existence up to 1917. If they want them, they can get a licence to publish them now. But I tell you, Mr. Chairman, that those plans up to 1917 were copyrighted. Ten or eleven years after the Goads decided to go out of business, they offered to the Canadian Underwriters' Association all their copyrights, and anybody can have any Goad plan he wants. Anybody can get a licence to print any Goad plan up to 1917. I make that statement frankly. But now you will realize this, Mr. Chairman, that I take a plan of 1917 and I re-plot that plan and I re-edit it and bring it up to date, to 1937 or 1938, and I complete the work, beginning with the skeleton of 1917, which becomes a copyrighted document. Just the same as I can take a book and I can edit that book and I can write notes from it and I can produce a new book entirely, provided I have the permission of the copyright owner.

I take it my friends will admit this. We all know, at least all lawyers know or should know, the case of the Queen Victoria pamphlet with regard to her very beautiful collection of bric-a-brac. She had photographed her collection of bric-a-brac in a beautiful volume, and she gave that to her friends and her relatives. It was sought to make publication of that, and the court said no; there has never been any publication within the meaning of the Copyright Act; this work has never been sold to the public, it has never been given to the public as a publication within the meaning of the Copyright Act or the then Act of 1842 of England; therefore there can be no publication of this work.

I take it that my friends are all aware of Charles Dickens' life of Christ which he wrote for the purpose of the education solely and only of his family and his children. Would anybody in this committee or anywhere else suggest

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that because he gave to his children and members of his family as an education the life of Christ, somebody should be able to go into his private boudoir and take the manuscript and force him to give it to the public?

By Mr. Martin:

Q. You are overlooking the fact that we have already stated we specifically intend to exclude literary and artistic works.—A. You mean literary and artistic works within the meaning of the Copyright Act?

Q. We are going to amend the Act that is now before this committee.—A. Could we have a copy of the amendment, and perhaps I could save a lot of trouble and labour?

Q. I think it would be a good idea.—A. I am talking of the bill as it is before the committee.

Q. Could you tell me from whom and on what terms the plans could be obtained up to 1917?—A. From the Charles E. Goad Company, and were?

Q. Pardon?—A. And were sold by the Charles E. Goad Company right up to 1931. The Charles E. Goad Company decided that they would not continue the map business after 1917. In 1911 they made a contract with the Canadian Underwriters' Association under which plans would be made and maps would be made. In 1917 they decided to go out of business and they decided to sell all their remaining stock, and they sold it willy-nilly to anybody that wanted to buy it. I venture to say my friends bought dozens of them. Mr. friend, Mr. Scott, has forgotten to say that while he represents Massey and Renwick—

Mr. Scott: I do not.

The WITNESS: Well, he represents a collection of non-board companies that Massey and Renwick launched as a brokerage house.

After 1917, until the supply of Goad plans were exhausted, anybody could buy them, anybody could buy them in Goad's catalogue. We started our plan department which went into operation on the first of January, 1918. We bought Goad's plans actually from their catalogue, and then we started to make our own plans. We sent our own engineers out. Goad's had nothing to do with it. We changed the plans in the field. We made our own plans, and we made them so that they would be available for purposes of reference to our members. We did everything necessary to the preparation of these plans, and these plans were completed by us, and we have never sold them. The way these plans are paid for is this: The members of the association decide they want a plan of a certain place. They apply to our plan department which is situated in Toronto and occupies two floors of a building on Victoria street, and ask them what it will cost to provide a plan—we will say for a place like Hamilton, or Lindsay, or Peterborough, for example—they ask what it will cost to make a plan for one of these places. The cost is determined, and we find out what member companies are prepared to pay for or to contribute to the cost of making these new plans. We will say that there are two or three companies, let us say three companies, who are interested in the preparation of the plans for this place, and when we are satisfied that there are a sufficient number of companies interested in such a plan we instruct our planning department to go ahead and make the plan. It may interest you to know what the making of such a plan involves by way of cost. The cost of making one of these plans is as much as \$100,000. That is why we have to have assurance before undertaking the expense that there is sufficient interest to justify the expenditure and work involved. Now, the catalogue to which Mr. Scott has referred is nothing more or less than a compilation of the proportionate cost to the member of each sheet, or each volume of plans, which a member has the right to know. It indicates his share of the contribution to the plan department of the C.F.U.A. It is

an indication of the amount which the member of the C.F.U.A. is prepared to contribute to the cost of the planning department of the C.F.U.A. for the purpose of getting out one of these new plans. Now, reference has been made to these Goad's plans. Whether they are Goad's plans of Montreal, or Toronto or any other place, they are unpublished documents, and the exchequer court has so held—that they are unpublished documents.

By Hon. Mr. Stevens:

Q. They are made under the system that Goad introduced in 1889?—
A. I might say, Mr. Stevens, that they are made exactly on the system of an engineering problem—which Goad I suppose adopted, and on exactly the same system as that used by the Atlas Map Company to-day in making up their insurance plans. Here is a collection of 10 or 15 Atlas Map Company's insurance plans. I cannot complain if they make these plans. I can't complain if these non-board companies want to take these Goad plans, and by the application of original labour, and at their own expense, have them revised and brought up to date. That is exactly what we have done. I would have no cause for complaint.

By Mr. Martin:

Q. Now, Mr. Mann, in reference to what you have just said, and what you have suggested throughout your evidence, is this not the situation; that if the facts are as alleged by you—assuming the passage of this bill, it will not act in a manner that is prejudicial to your interest. I think Mr. Stevens was right in allowing you to give your part of the case, having in mind the specific problem brought before us by Mr. Scott. Do you not think it would be more helpful to us if you were to address yourself now to the principle involved in this bill, and particularly with reference to the point that if there be an abuse that abuse should be corrected by the Commissioner of Patents and the exchequer court?—A. I am obliged to you, Mr. Martin, for that suggestion. I have to read within section 14 the provisions of the succeeding sub-section—"In the case of any work wherein copyright subsists, whether published or unpublished, that there has been an abuse of the rights conferred by this Act." I want to emphasize that, "whether published or unpublished" and, "that there has been an abuse"; and asking for relief. I would submit that if Mr. Martin is prepared to take out the words "or unpublished"—

Mr. MARTIN: Yes.

The WITNESS: Is Mr. Martin prepared to take out that "unpublished"?

Mr. MARTIN: Yes.

The WITNESS: We have gotten so far. You are prepared to take out the words, "or unpublished"?

Mr. MARTIN: Yes.

The WITNESS: And call them "published" works? I just wanted to know. It will save quite a lot of time probably if you will take out these words, "unpublished works."

Mr. MACDONALD: It would then read, "any published work"?

The WITNESS: Yes.

Mr. SCOTT: If I might offer a suggested wording which I think is appropriate: "Whether published or otherwise prepared, distributed or issued for business or commercial purposes."

The WITNESS: Yes. You see the skill which characterizes the work of my friend Mr. Scott. He says, "whether published, or otherwise prepared, distributed or issued for business or commercial purposes." If my friend Mr. Scott will limit that section to "published works" I will curtail my argu-

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ment and save the committee a good deal of time. Will you limit that to "published works," Mr. Scott?

Mr. SCOTT: No.

The WITNESS: I take it then, that you will see exactly the viciousness of this bill.

Some Hon. MEMBERS: Not at all.

The WITNESS: The viciousness of this bill, and I say that advisedly.

By Mr. Martin:

Q. Would you consider it vicious?—A. Would I consider it vicious? My friends know what they are doing now.

Mr. KINLEY: Mr. Martin said that he was prepared to take out the word "unpublished"; do you disagree with that?

The WITNESS: What my friends want to do is to invade the territory of private ownership voted on and accepted by the Berne convention, an amendment to the Berne convention, and the Rome convention; because what they are trying to say now is that if you have an unpublished work—if I write something that has to do with political or national matters and somebody can show that he has an interest in having it published and I have never published it—it is a private work—and it can be shown politically or in any other way that somebody is interested in having it published I can be forced to have it published. It abuses a property right that is mine in identically the same way as Mr. Martin and Mr. Scott are trying to do—

Mr. MARTIN: I am now going to suggest to you, Mr. Mann, that in section 1 of the Act we leave out altogether the words, "whether published or unpublished"—

Mr. KINLEY: I think, Mr. Chairman, that it was decided that we were not going to arrive at any conclusion to-day.

Mr. MARTIN: I am just doing that so that Mr. Mann and I can come closer together.

Mr. KINLEY: You have already declared yourself on that point.

Mr. MARTIN: That is what I am doing. I am going further now.

Mr. MacDONALD: If you take out the words "published or unpublished," you might just as well leave them both in.

The WITNESS: Just as well, Mr. MacDonald.

Mr. MARTIN: I am trying to satisfy him.

The WITNESS: You cannot satisfy me by leaving them out. If you take out the words, "published or unpublished" you refer still to the rights conferred by this Act. And the right conferred by this Act, the right of any man—any one of you here—the right of any one in the countries who are parties to these conventions to have their unpublished works held inviolate. I take it that my friend Mr. Martin will admit this; if he does not; at least I hope he will admit this; that if a big oil company or a big manufacturing company, or some life insurance company—to take a typical example—prepares a pamphlet on sales discussions and sales talks for its agents; Tells them to treat the prospect as always being right; treat him on this principle; discuss these points with him with a view to helping him to get business; talk to a prospect about his age, the number of children he has, the number of people there are in his family, and the benefits that may arise from his having insurance and so on. That pamphlet is intended for the use of the agent and it is got out for the purpose of assisting the agent in selling life insurance policies, then what my friend Mr. Martin suggests is that you have the right under this Act to go to the Commissioner of Patents and say I want you to give me the use of that pamphlet, and you take that way of getting it.

Mr. MARTIN: Do you want my answer to that?

The WITNESS: Not until I have completed my question.

Mr. MARTIN: I know what your question is.

The WITNESS: How can my friend Mr. Martin suggest an answer before he has heard my question? They say, you are abusing this right, the right of distributing this pamphlet, which nobody will deny is subject to copyright under the provisions of the Act. They say, you are abusing the right; and then suppose some independent person is the author of a new document but not the owner of that copyright, together with the property right in that copyright, suppose he prepares a similar document for the Confederation Life, or the Manufacturers' Life or some other life insurance company; I do not think my friend Mr. Martin could suggest that that suggestion for a moment should be the subject of legislation, would you Mr. Martin?

Mr. MARTIN: To answer your question, if you put it that way: There is a difficulty naturally in your analogy; but, assuming away the difficulty, if that particular pamphlet were one which were in the possession of one company it would hurt the general institution and therefore create an abuse. I would certainly think that it would be in the interest of all companies and in the general interest of Canada that you should not permit it to exist.

The WITNESS: So then what you would say is this, that of the 60 or 70 civilized countries who have joined to sanctify the maintenance of private rights Canada should be singled out—with its 11,000,000 of population—should be singled out from the 60 or 70 countries to these conventions—and I have here the copyright acts of every civilized country in the world—and you think Canada should be singled out, and that legislation should be passed that would be in the public interest as against all of the other members of the convention, whereby private property could be taken because you say, and you are able to convince three other persons, that you are entitled to say to the owner of that private property that it should be given to somebody else.

By Hon. Mr. Stevens:

Q. Mr. Mann, would you explain this—I have listened to you very carefully—if you will turn to section 14, it says, "Any person may apply to the minister for a licence to print and publish in Canada and book wherein copyright subsists, if at any time after publication and within the duration of the copyright, the owner of the copyright fails:

- (a) to print the said book or cause the same to be printed in Canada,
- (b) to supply by means of copies so printed the reasonable demands of the Canadian market for such book, or plan, or map.

Now, for 30 years the Goad's plans were supplied to everybody; and, frankly, you know that?—A. I think a good many individuals have them.

Q. I think I bought them as far back as some time in the '90's. I know something about them. They were supplied generally, not to insurance companies alone, but to mortgage companies, real estate companies and so on?—A. Certainly.

Q. We used to use them for the purposes of our real estate office.—A. There were two classes of plans, if you remember.

Q. I know. I used to have one of these hanging for 30 years in my office.—A. There are insurance plans and—

Q. And they are renewed and revised from time to time? In Vancouver they had to be revised quite often.—A. Yes, Vancouver was growing very rapidly.

Q. That plan was published and generally used by the public. Now, do you claim that because in 1917 you acquired—when was it, was it in 1917 that you acquired the rights of the Goad family in that copyright—that from

[Mr. J. A. Mann, K.C.]

that point on you have the right to deny to the public who have been buying these plans a continuation of the service?—A. Just the very opposite. In the first place, are these really paid for? We acquired the copyright in 1931, not 1917. We acquired those copyrights in 1931.

Q. That makes it all the stronger.—A. I do not see that. It is the very opposite. If anybody wants Goad's plans they are available to them and they can get a licence to publish them. The minister is the person who is in a position to decide?—A. Can decide what remuneration ought to be fixed to compensate the owners for the use of those plans. Our association bought and used them. Any of Goad's plans made are published.

Q. You are trying to get away from my point? I may be stupid in putting it.—A. I have never said that you were stupid, Mr. Stevens.

Hon. Mr. STEVENS: You said it a while ago, that is why I am rather nervous in talking to you now.

By Hon. Mr. Stevens:

Q. Do you get this point? The circulation of these plans continued down to 1931. Everybody bought them freely, and without any interference, the copyright was maintained intact down to that time. You stepped in in 1931 and you secured control of these copyright plans?—A. Yes, sir.

Q. Then you say, from now on these plans—or supplemented service,—because, mark you, inherent to that map service was the continuity of the service, you know that? You know that that was an important part of the service, the people were able to get these amended plans, and, of course, they paid for them?—A. Quite.

Q. The very continuance of the copyright was dependent upon the adaptability of the plan to amendments on plans here and there from time to time as the years went on. Now, this was continued for forty odd years, from 1889, I think it was, until 1931; then in 1931 along comes another party, they buy control of it and they say to the public generally, your rights to this continuing service and to the use of these plans is denied—because the plans become useless unless the service is preserved and kept up to date; and you take the position that because you are the owners of the copyright now you can do what you like; you say to the other people, you can get something else, or you can make your own plans, we are going to take advantage of the work that for forty years was available to the public and we are going to deny to the public a continuation of that service?—A. It is a difficult thing for me to say that you are totally and completely wrong, but you are wrong.

Q. That is your opinion?—A. I apologize if I said you were stupid, it was never meant in that way.

The CHAIRMAN: I do not think you said so.

The WITNESS: I am not inclined to be as rude as that.

Hon. Mr. STEVENS: I don't care whether you said it or not.

The WITNESS: If I did say it I take it all back, I apologize.

Hon. Mr. STEVENS: However, that may be, it does not make me any more stupid.

The CHAIRMAN: The committee rules that you are not stupid.

By Hon. Mr. Stevens:

Q. In what respect am I wrong?—A. You are wrong in your lack of—perhaps I had better say, your apparent lack of knowledge of copyright law.

Q. That is all right, will you enlarge on that?—A. I say to you quite frankly now that I think you will be able to appreciate the situation. Goad's plans were the subject of copyright. Copyright represents property. It

represents property in an intellectual production. Goad's intellectually produced plans, wherever Goad's plans exist today, they are the subject of compulsory licences to publish. You can get every Goad's plan. But what I say about it is this, Mr. Stevens; that if there is a Goad's plan published in 1917 and the public is at liberty to copy it; it is at liberty to get it and it is at liberty to get a licence to publish it, if the owner of the copyright will not publish under the provisions of section 14. The public has no right to get that ownership of the 1917 plans upon which we superimposed the work of 20 years' labour at a cost of millions of dollars. It is entitled to get them, but it is not entitled to get the new work superimposed upon that work as a skeleton.

Q. Now, Mr. Mann, you are evading the issue; Goad's plans were kept up to date until 1931 absolutely up to date?—A. That is one point on which you are entirely wrong, Mr. Stevens, they were not.

Q. That is a question of fact.—A. It is a question of fact, you see? I think you will have to take my word for it, because I have made a very thorough study of the situation, and I am afraid you have not. The Goad's plans were not kept up to date, Goad's began in 1917 to close out, and they sold in 1928 and 1929 the things that existed in 1917.

Q. And you acquired them in 1931?—A. No, we acquired the copyright in 1931.

Q. That is what we are talking about?—A. You are talking about the plans and I am talking about the copyright.

Q. I am talking about the copyright?—A. The plans they had in stock in 1917 were the same plans they had in stock in 1931, I mean what was left of them, and they continued to sell those plans until 1931. Any plan bought up to 1931 was a plan which must have existed prior to 1917, because they made no more plans after that date, they only sold their stock-in-trade.

Q. Why would you buy their copyright if they were so useless?—A. I did not say they were useless. I was saying that in 1918, 1919, 1920, 1921, 1922 and 1923, and so on they were still selling off their stock of plans. I admit that they were much more useful then than they would be in 1938. If my friends wanted a stock of these plans why did they not buy them? But what we did do, and what my friends did not do, was we spent several millions of dollars in creating new works up to date. We decided to take our new works and photograph them and make copies of them for the use and convenience of members of our association. That is what I said.

By Mr. Raymond:

Q. Do you mean millions of dollars, or cents?—A. Millions of dollars.

Q. Millions?—A. Yes, millions; with all due respect to the members of the committee, possibly you do not realize just exactly what it costs to do work of this kind.

By Hon. Mr. Stevens:

Q. If I might give an instance, take the Encyclopedia Britannica?—A. Yes.

Q. It is published and revised from time to time. It is a copyright proposition. Do you suggest that anyone should have the right now to take over the copyright on a work of that kind and say we are going to revise and publish it for ourselves and nobody else will have any right to a continuation of the service other than the limited number of people associated with us?—A. I don't think I follow you, Mr. Stevens. I think it is an entirely different thing.

Q. Let me put it this way—I seem to be incapable of making myself clear.—A. Oh no, sir; not at all.

Q. Here is a system of insurance maps—we will confine ourselves to that?—A. Yes, sir.

[Mr. J. A. Mann, K.C.]

Q. A system of insurance maps that have been in constant use for a period of 30 or 40 years—

Mr. MACDONALD: Mr. Chairman, might I draw your attention to the fact that this is the King's birthday and the Royal Salute is being fired.

(The committee stood at attention while the salute was being fired.)

The committee resumed.

By Hon. Mr. Stevens:

Q. I am afraid, as far as we are concerned Mr. Mann, that we are approaching this thing from two different angles. I am not disputing—as far as I am concerned I need no persuasion on the point that your association have acquired the right of proprietorship in the copyright. I quite appreciate that. I do observe, however, that in the Act as it exists, particularly in section 14, it does provide that a person may apply to the minister, and so on; and then this amendment, as far as I can read it, simply provides that where there is a refusal—and in this case the Goad maps come into the argument—that where there is a refusal they should have the right to submit the case to the Commissioner of Patents and to take his arbitration on the dispute, and then if either one of the parties to the dispute is dissatisfied there is an appeal to the Exchequer Court. Now, what conceivable objection can there be to that?—A. Might I interrupt you? There is just one thing. Read the first three lines in section 14. Would you mind doing that?

Q. “Any person may apply to the minister for a licence to print and publish in Canada any book wherein copyright subsists, if at any time after publication and within the duration of the copyright?”—A. Would you go a step further, sir?

Q. Yes?—A. “If at any time after publication”; isn't that an essential requirement of section 14?

Q. Absolutely. I admit it. What I argue is this; that these plans having been in common use for everybody for 30 or 40 years— —A. Which plans, sir?

Q. Goad's plans?—A. Goad's plans—which group?

Q. Goad's insurance plans?—A. Yes.

Q. Now, just a minute, I know what you are doing; you are discriminating between Goad's plans and your insurance plans. The point is, what is your system of insurance plans? I do not care whether you call them Goad's plans or what you call them. These plans have been in existence for some 30 or 40 years and they have been available for general distribution to the public, but at a certain time, in 1931, you acquired the rights in these copyrights and then you denied to a substantial proportion of the public the right to purchase on the same terms as others a continuity of that service. That is the dispute.—A. But, the other map companies are not denying it to these people. There probably are half a dozen of them in Canada.

Q. No, but, for instance, I have in my office a Goad's plan which I think has been there for some 35 years—since 1906 or something like that—why should not I have the right to a continuation of the service? As a matter of fact we have, because we had to be represented in both companies—that is where my experience comes in. But I do say this, I am very much in earnest about this question of principle; and I do say this that under the patents law or under the copyright law parliament must guard against the denying to the public the right of service— —A. I agree with you, absolutely.

Q. But I do not go so far as to say that there should be a statutory obligation upon the goodwill of anyone, but I do say that there is nothing unreasonable in this proposed bill, that where you get into a dispute with some other interests, some conflicting or competing interest, that the matter should be referred to a

commissioner—in this case to the Commissioner of Patents—and with an appeal to the Exchequer Court.—A. Yes.

Q. It seems to me that if that principle is admitted you do no violence to the principle of proprietorship at all and you preserve your rights subject to the provision of the Exchequer Court. I cannot see why you should object to it?—A. Might I put this to you, Mr. Stevens? Perhaps this would help. Are you saying this? Are you saying that, admitting that my plans have never been published and have not been given to the public for sale and are not intended to be so published, that you are entitled to take away from me the owner of the copyright the benefits that accrue to me by reason of that unpublished work? Are you saying that you propose to take away from the owner of the copyright the right conferred by this Act, which is the sole right to determine whether the owner of the copyright will publish or not; is that what you are saying?

Q. No, that is not what I am saying?—A. That is what I understood you to say.

Q. I do not think you did. I am just inclined to think that you are just as stupid as I am.—A. Maybe; that is your opinion there is no doubt about that.

Q. No, you don't think I said that at all?—A. Yes, I do. I asked you if you said that?

Q. I know you didn't, and I do not believe you.—A. You do not believe I asked it?

Q. No; I do not believe your refusal.

Q. That is not the instance here at all. If you start *de novo* in the publication of some new work, plan, book or anything else, then in the creation of a new work you get a copyright that is your property; but under the Act, if you publish that and it is circulated, then there enters into it a public interest and public right?—A. Yes, sir.

Q. Then parliament by its power and within its duty must safeguard those public interests and public rights. And what happened in this case, as I have repeatedly said, and I am going to reiterate it now, is this: here was a peculiar service, rendered for 30 or 40 years to the people of Canada. I think I am within the truth when I say there was no other similar service over that period of years?—A. Have you read the evidence of the Massey-Renwick case?

Q. No, I have not.—A. It would be enlightening.

Q. There may have been some similar services in recent years, but I say down during the long period of years as far as I know there were no other similar services. There may have been some small local services in the city of Toronto, but I am talking about the Goad system. Now, that service, having been given over all those years, and you having acquired it, which you have, then to deny the public, I say parliament must step in and provide some means, some referee or some arbitration power that will decide between the interests that will inevitably be affected. Copyright surely never intended that you, by acquiring a copyright that had been in existence for thirty or forty years, could stop the privilege that has been enjoyed all these years.—A. The House of Lords said it could, in the leading case of England.

Q. Well, I have studied this patent business in Canada, and I do not want to get into that realm but some of these days parliament will have to take notice of it. I do not say this disrespectfully about what the House of Lords may have said on the law, but I do say that insofar as things within Canada are concerned, not interfering with these international conventions, we have a right to protect the interests of our citizens and the public generally.—A. Yes, I agree with that.

Q. I do not say that with any disrespect to the House of Lords.—A. I agree with that. What I am asking this committee to do is to protect our citizens generally. I am glad you put those words in my mouth, because that is exactly what I am asking the committee to do; not to protect a class.

[Mr. J. A. Mann, K.C.]

Q. If you can show me wherein this bill will interfere with the rights of anybody, then I would think you had a case. But I cannot read into this proposed amendment any such situation. It may be that the wording of it might be changed, but the principle that is involved in this proposed amendment appears to me as merely the machinery by which to erect an arbitration body or forum that will intervene where there is a dispute arising out of a long-standing published and used copyright.—A. Mr. Chairman, I should address the chair, I have been addressing Mr. Stevens, because he and I have been having a nice little discussion for ten or fifteen minutes now. I do not see how, Mr. Chairman, my friend Mr. Stevens or anybody else can suggest there can be a dispute or an argument or anything detrimental to the public interest of Canada in connection with an unpublished intellectual production. How can there be a dispute?

Q. I do not argue that.—A. Then, Mr. Stevens, I must say this to you; that Goad's service ceased in 1917.

Mr. KINLEY: That is the point exactly.

The WITNESS: I was up to 1917. Anybody that wants to get Goad's service up to 1917 can get it. They cannot get it after, because it did not exist. Nothing has been published since, but there are a dozen other map companies doing the same thing.

By Mr. Martin:

Q. If that is the case, surely Mr. Stevens' argument is unanswerable. There can be no objection to this parliament through this committee giving the Commissioner of Patents the right to deal with abuses, or, whether there are abuses or not, with an appeal to the Exchequer Court. Confining ourselves merely to that principle, what earthly objection can be presented?

By Mr. Ward:

Q. I understood you to say that there were a half a dozen or dozen publishers in this country publishing plans that could be purchased by the non-board companies?—A. Yes, and have been. Here are some of them here. Why do they not keep on?

By Mr. Martin:

Q. Supposing there are 100, supposing this company can get all the maps in the world; addressing ourselves to this one principle that if there is an abuse there should be an opportunity of correcting it. Do you agree with that?—A. Yes. I agree that if there is an abuse it should be corrected.

Q. Then you agree with this bill?—A. No, I agree with part of it insofar as something belonging to the public is concerned, but I disagree with it in regard to something that the public has no business in or has nothing to do with, as the courts have already stated, and that is unpublished works.

By Hon. Mr. Stevens:

Q. You made a statement a moment ago which seemed to have a considerable effect on the minds of the members of the committee regarding an argument I made. Do you say that the service known as the Goad Map Service ceased in 1917 absolutely?—A. I do.

Q. And that there have been no issued plans that are attachable and have been utilized by those who had that service?—A. Well, Mr. Stevens, how could I possibly answer yes to the last part of your question, that there have been no plans since used or utilized by those who had that service? It would be stupid for me to say yes to that.

Mr. KINLEY: Any engineer could do it.

By Hon. Mr. Stevens:

Q. That is not stupid.—A. Stupid of me.

Q. I say it is not stupid of you nor is it stupid of me. Now, listen: these maps exist; they are in the insurance offices, mortgage offices and real estate offices.—A. Do you make that statement as a fact?

Q. I do.—A. That Goad's plans exist?

Q. Yes, because I have seen scores of them.—A. Of Goad's plans?

Q. Yes. And these plans have from year to year been serviced and revised.

Mr. KINLEY: By whom?

Hon. Mr. STEVENS: By the owners and operators of the Goad system.

The WITNESS: Oh, no.

By Hon. Mr. Stevens:

Q. Wait a minute. You say that since 1917 there has been no servicing of those maps?—A. I do not know. I say that since 1917 the servicing of the maps was the creation of a new plan system by the Canadian Underwriters' Association unpublished and unsold.

Q. Exactly. That is exactly the point at issue, Mr. Chairman, in this whole business. Therefore, why should that large section of the public who invested a very considerable amount of money—I have forgotten what these plans cost originally but they were of substantial value—why should these people who have had these plans all through the years, 30 years, be denied these plans because some other corporation buys the copyright? And why should we not supply some means of appeal or arbitration in connection with that denial?—

A. May I ask this, why should this class that you appear to be enthusiastically supporting and who had these plans up to 1917, why should this class have not gone and got their engineers and built up their own plan department and serviced these Goad plans?

Q. I will tell you why.—A. There is no answer.

Q. Because they bought the service from the owners of the copyright which copyright you purchased?—A. We did not buy it until 1931—14 years later.

By Mr. Martin:

Q. Is it not a fact that these plans were, in the course of years, bought up bit by bit by the interests that you are so ably representing?—A. No, sir,

Mr. KINLEY: Mr. Chairman, I think that is the whole point at issue. It affects the expense of doing business.

The WITNESS: That is it.

Mr. KINLEY: The non-tariff companies are using a thing which they did not innovate, and they want to get it arbitrarily?

Mr. MARTIN: The commissioner of patents, if this bill goes through, could so hold. Is that not right, Mr. Mann.

The WITNESS: The commissioner of patents could, if that bill goes through, violate the principles of the copyright law of the whole world.

By Mr. Martin:

Q. I know, but, Mr. Mann, you have faith in the Exchequer Court and the commissioner of patents, and the Exchequer Court and the commissioner are not likely to do things which should not be done. Is the principle of this bill one to which serious exception can be taken?—A. I think so. I think the whole principle of the bill is wrong, absolutely and utterly wrong.

Q. You have already said that if there is an abuse against the public that abuse should be taken care of. You have already said that, is that not right?—A. Yes. I think all public abuses should be taken care of.

[Mr. J. A. Mann, K.C.]

Q. What other agency is there to take care of this matter?—A. The author or owner of the unpublished copyright, himself. And that is provided for in the Act. If it is unpublished, how can there be abuse? If I own half a dozen things, surely I can do what I like with them as long as I do not transcend the provisions of the criminal law. If I own a half a dozen dogs or a stable of horses, can I not treat those horses anyway I like? And how has the public got a word to say to me as long as I do not transcend the provisions of the criminal law. Can you tell me how?

Q. I can, if you are conducting it in a way that is prejudicial to the public interest.—A. That is what I said, as long as I do not transcend some principle of the civil or criminal law.

Q. That is all we are trying to deal with here.—A. No, you are dealing with the right of property in which the public has no interest.

Q. Well, all right, if the public has no interest, the commissioner will so declare.

By Hon. Mr. Stevens:

Q. I come back to the Goad map system. There was established by the public a very definite interest in it which they paid for over thirty or forty years. What right have you or anybody else to buy up that copyright and say that all amendments to that Goad plan from now on are new productions and we are going to copyright them separately and those who have paid for that service all those years are now to be denied the continuity of that service?—A. I do not say that. I say I happened to be the one who did it, but anybody could have done it.

Q. My submission is that we should provide in the law against anybody securing that position or control over a copyright.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: What you are saying is that the owner of a copyright has no right to determine whether he will publish his own work.

Q. Oh, no. Let me put it another way. You are the one that is violating that principle.—A. Oh, no.

Q. Wait a minute. The principle in this copyright that we are talking about is that Goad owned it and published it for a long period of years?—

A. Which copyright?

Q. The Goad map copyright.—A. I do not quarrel with that.

Q. Yes, but the public acquired an interest in it.—A. They have still got an interest in it.

Q. Not if you stop the service.—A. But what I cannot get into my head to save my life, and I cannot see how any intelligent man can get it into his head, is why somebody has got to be forced to—

The CHAIRMAN: Order, gentlemen.

Hon. Mr. STEVENS: Mr. Mann has implied that I was stupid; now he has said we are not intelligent men.

The WITNESS: I think you will have to forgive me because I have perhaps a little broader knowledge of the subject than some of you. I do not say broader than you have, but broader than some of you. I know the subject pretty well.

Mr. DUBUC: Is it not right that your case appears to be in two parts: one part which you have acquired and one part which you have worked? After all, I have been listening to everything and the asset that you have, or the property that you have is not in one piece, it is composed of two pieces?—A. Exactly, and I say the one I made by my original research the public has no interest in.

Q. But it is of no value unless you have the other one?—A. Yes. If you will take the schedule in the judgment that is before the committee you will find a very large proportion of the plans set out in that schedule which we have copyrighted. They never had anything to do with Goad's plans.

Q. The point is to see whether we are doing the fair thing to yourselves and to the public, to find out if what you use in two parts is an abuse. No citizen can object to that?—A. Yes, but what I am saying, Mr. Dubuc, is that any citizen to-day has the right to do identically what we did.

Q. We are looking for an abuse, we are not looking to see whether we have that right or not.—A. Then I say, how can there be an abuse? I say, how can there be an abuse of something by a person or a collection of persons in respect of an entity or a thing in which the public have no interest? And the public have no interest by the terms of the statute in an unpublished work. Understand what I say, an unpublished work. Goad's plans were published. Goad's maps up to 1917 were published, and the remainder of their stock they sold spread over a period to 1931. In 1931 there was nothing left. The public have an interest in them. Those maps existed in 1917. The public can get copies of them; if they can find the originals, they can get a licence. All I own is a copyright. But what I say is that the maps that I made—and when I say "I," I mean my companies,—the maps I made were original works, notwithstanding what the foundation of them was, and real complete revisions and remakes of maps and maps made entirely independently of Goad or anybody else. That is what I say the public has no interest in.

By Hon. Mr. Stevens:

Q. Which are useful only if used in connection with Goad's maps?—A. No, they have no relationship with them. That is what I have been trying to hammer into you for the last twenty minutes. Goad's maps have no relationship whatever to our plans—none whatever. The Goad maps have nothing to do with them.

By Mr. McGeer:

Q. As I understand what you have said, it is that up to 1917 Goad maintained a map service for all of the insurance companies in Canada?—A. I might correct that. In 1911 an agreement was entered into between the Goads and the Canadian Fire Underwriters' Association then whereby the Goads would supply the service of original maps for a period of six years, and that expired in 1917. There was some litigation between Goads and some of the companies in 1913 wherein some of the companies set forth that the Goads had entered into a contract with the Canadian Underwriters' Association and that the Goads had refused to sell to non-board companies the maps that already existed. I think that action was lost in 1914 and the companies continued buying maps.

Q. That apparently was an attempt to disrupt the service but which by agreement was continued?—A. To 1917.

Q. So that we come back to the original proposition, that up to 1917 the Goad company owned the copyright of the plans that they had developed, and maintained a service to the public or to all the companies in Canada which ceased in 1917? Is that correct?—A. Correct. Then they went out of business.

Q. In 1917 there was no Goad service on revision?—A. None.

Q. But everybody had possession of the Goad service maps that had been published and serviced up to that time?—A. Exactly.

Q. So that if anybody wished to keep up to date the maps that Goad had supplied up to 1917, it was a matter of individual or group responsibility?—A. Nobody could have said it better than you have said it. That is exactly what the position was.

Q. Now, under the provision of the Copyright Act, any person can apply and secure copies of the Goad maps that were published and serviced up to 1917?—A. Yes, sir.

Q. And you have no objection?—A. None whatever.

[Mr. J. A. Mann, K.C.]

Q. To that application being granted by the minister administering the Copyright Act?—A. Absolutely none whatever. They can take those maps and then re-service them in any way they like.

Q. The Canadian Underwriters' Association are a group of insurance companies that are in competition with other companies, among them being the non-tariff companies who are applying for this amendment?—A. Yes, non-board companies.

Q. Now, the dispute that now exists and that has been settled in the Exchequer court in your favour is whether or not your competitors, the non-board companies, had the right to have access, not to the Goad plans, but to the revisions of the Goad plans made by the Underwriters' Association for their own use in their own business?—A. That was it, plus the right to copy or reproduce even the Goad plans back to 1896 because we owned the copyright. But there was no question in the Exchequer court as to the right of the companies other than the board companies to demand and procure a licence from the minister to copy those plans of Goad's.

Q. I am afraid we are confusing the actual issue. What the non-board companies had done was to have infringed that copyright without the sanction of the minister under the Copyright Act?—A. That is it exactly.

Q. But what I am dealing with is this: that the non-board companies, under their Copyright Act as it is, have the right to apply for the use of those Goad plans which were published and serviced up to 1917?—A. Without a question of a doubt.

Q. And if they had made their application under this Act, they would have had all the service that Mr. Stevens has mentioned, provided their application succeeded.—A. Yes.

Q. They would have had all the service that the Goad Company had provided up to 1917?—A. Certainly would. Nothing in the world could stop them. The law is there all in their favour, and I doubt if we would have opposed it.

Mr. MARTIN: Except that a thousand copies would have to be printed.

By Mr. McGeer:

Q. That, of course, is all you could get, because I doubt whether the minister would be able to compel anybody to publish them. If he refused to publish, then all that the minister could do would be to authorize the person desirous of publishing the map to publish it himself. But I do not think there is any mandamus power here which would go so far as to say that the minister would assume the responsibility of saying, "You must publish." That is as far as this section goes. I suppose in addition to the maps serviced by the Underwriters' Survey Bureau, individual firms make their whole changes in revisions with reference to particular areas?—A. I know of nothing to stop them, nothing in the world.

Q. Is there anything to stop the non-tariff companies from taking the Goad maps up to 1917 and going out and doing exactly as you have done?—A. Absolutely nothing.

Q. In the way of producing their own maps?—A. Nothing in the world.

Q. I asked you that question because I think that is the distinctive difference between a copyrighted plan of this type and a patented article, the reproduction of which is exclusively within the possession of the patentee?—A. That is the exact distinction.

Q. And it seems to me that the real issue involved is pretty close to whether or not competitors should be allowed to take advantage of the industry and skill of each other.—A. That is exactly it.

Q. Which would in my opinion go a very long way towards destroying the benefit which the public gets from free competition. Now, there is a

two-fold purpose, I take it, in this particular amendment. One is to have access to the Goad maps which the Copyright law already provides for. The other is to have access to the revisions made by the underwriters who are the competitors of the non-board companies and who, of course, the Copyright Act has been careful to protect?—A. Exactly.

Q. So that this proposed amendment, if it is adopted, involves a complete change in the whole principle of copyright law.—A. The whole principle of copyright law.

Q. Namely, that of giving to a competitor access to the skill and industry of the one with whom he is competing.—A. His tools of trade. That is correct.

Hon. Mr. STEVENS: Will Mr. McGeer permit me to ask him a question, because I am very much interested in his analysis? Assuming something has been copyrighted—we will stick to Goad maps—and has been serviced down to a certain time and has been used by two classes of people, or, in fact, one class and the public generally on the other side: would you consider it an infringement of the principle of the copyright law, the principle to which you refer, to legislate against one group for purchasing the copyright and placing themselves in a position where they can deny all other persons, the public generally, from continuing the servicing of Goad maps?

Mr. McGEER: That does not happen here. I might agree with Mr. Stevens if that were so, but I cannot bring myself to believe in this instance that this is a proper presentation of the facts. Here is a service which starts out and continues up until 1917. Now, that service ends. No one can compel—nobody or no law that we have compels the continuation of a service or any other arrangement. Goad decides to quit. Now, we are not concerned as to whether he decided to quit because he was bought out or for some other reason. The evidence before the committee is that Goad decided to discontinue the service in 1917, and he discontinued the service. Now, everything that Goad had done up to that time was available to the non-tariff companies as well as to yourselves; that is, providing they could succeed under section 14 of the Copyright Act which reads that any person can apply to the minister for a licence to print and publish in Canada any book—which includes maps and plans—wherein copyright subsists, if at any time after application and within duration of the copyright the owner of the copyright fails to print the said book, or cause same to be printed in Canada—(b) to supply by means of copies so printed the reasonable demands of the Canadian market for such book. And then it goes on to give the details. But, applications could be made, so that even to-day the non-tariff companies could go to the minister administering the Copyright Act and say to the Underwriters' Survey Bureau, we want copies of Goad's map published up to 1917, and if the minister says that they are entitled to them, then you would have to get that skeleton basis upon which the tariff companies acted, with the same organization that the underwriters are using, take their own engineers and superimpose upon that foundation which Goad brought up to 1917, all the particulars that you have asked.

By Mr. MacDonald:

Q. Is that correct, Mr. Mann?—A. It is perfectly correct; and I go further, I state that to the extent that we have the Goad plans up to 1917 the non-tariff companies will have no difficulty whatever in arriving at a small nominal remuneration for their use and for the licence.

The CHAIRMAN: Order.

By Mr. McGeer:

Q. In addition to that you informed us that there were some number of companies compiling maps?—A. Yes, sir.

Q. And giving the same service?—A. Yes, sir.

[Mr. J. A. Mann, K.C.]

Q. How many did you say there were? Six?—A. Well, would you let me ask Mr. Reynolds, my assistant. I have four here; Lloyd's Map Company, Wilson and Balfour, the Provincial Insurance Survey, and the Canadian Atlas Company.

Mr. MARTIN: Just recently started.

The WITNESS: I do not know how recently they started. Lloyd's Map Company is not just recently started.

By Mr. McGeer:

Q. They could have access to Goad's maps up to 1917?—A. Oh yes, they could.

By Mr. Martin:

Q. Whom could you get them from?—A. There must be someone from whom they could get them.

Q. Whom could you get them from; not just somewhere from somebody?—A. You are asking me where you could get Goad maps. I cannot answer that. I could not tell you where you could get Goad maps.

Q. Of course not.—A. Mr. Stevens says he has some. The non-board companies must have some. I do not know whether the manager of our own survey bureau has some of them still or not. I do not know that.

Mr. TAYLOR: Mr. Stevens says they are all over the country.

Mr. MARTIN: In the hands of individuals. If I want to get one of those plans now how am I going to get it?

Mr. McGEER: Let's get back to the point.

By Mr. McGeer:

Q. The Goad maps were sold to all insurance companies up to 1917?—A. Yes.

Q. The non-tariff, or non-board companies were in operation before 1917?—A. Yes.

Q. Is it possible that these companies doing business in Canada would not have in their files the Goad maps that were published from time to time up to 1917?—A. I can answer that, Mr. McGeer—I have just been informed—that the survey bureau has got practically all the copies in its possession, so if they want a licence for this service up to 1917 they could follow this section 14 of the Act.

Q. Well, Mr. Scott, I am informed by the owners that your non-tariff companies have in your possession the Goad maps that were published up to 1917?

Mr. SCOTT: Yes, we have them, but they are now becoming obsolete.

Q. (To Mr. Scott) Now, as a matter of fact, the question was asked whether you had these in your possession.—A. (Mr. Scott) Yes, we have them in our possession.

Mr. McGEER: Under section 14 of the Act you could apply to the minister for leave to publish these maps with their own superimposed upon them and brought up to date by the work of the engineers and surveyors of the non-tariff companies. That is correct, isn't it?

Mr. SCOTT: Quite.

By Mr. McGeer (To Mr. Mann):

Q. Well then, consideration of this amendment comes down to one point and one point only; and that is whether or not the non-tariff companies shall

have the right to apply to the minister to have your non-published works, produced for your own business advantage.—A. That is it exactly. Right there you are closer to me in this case.

Mr. MARTIN: Of course, Mr. McGeer—would you allow me to interject?

Mr. McGEER: All right.

Mr. MARTIN: That might—for argument's sake, and only for argument's sake—apply to this problem. This bill is more far reaching than that.

Mr. McGEER: I quite agree. I am not dealing with that situation which is even more serious from the point of view of publishers and others.

Mr. MARTIN: Oh, no.

Mr. McGEER: I do want to point out, Mr. Chairman, that I believe we are confronted with an amendment which involves a complete change in the whole principle of protection which the copyright laws were designed to provide.

The WITNESS: Exactly.

Mr. MARTIN: Mr. McGeer might ask you a question then; I won't delay Mr. McGeer; surely copyright does not mean that the owner of a copyright—and I am not talking now of literary or artistic works, because they are not in the minds of the sponsors of this bill at all—surely the ownership of copyright does not permit any abuse in respect to the ownership of that copyright.

Mr. McGEER: I agree with you. I quite agree with you.

Mr. MARTIN: That is all we are seeking.

Mr. McGEER: But it is not abuse in the conduct of any business for a man to go and do something for himself which he copyrights and preserves because he has paid for it. Now, if in doing that he does something that somebody else cannot do, and as a result gets a monopoly—not as regarding his own industry but as regards the general situation—then, that is an abuse. Then, these non-tariff, non-board companies can do exactly what the underwriters are doing. There is nothing to stop them taking the Goad plans and superimposing upon those plans the changes in the various communities that come from time to time. There is no monopoly in the Underwriters' Survey Bureau that precludes the non-tariff companies from doing exactly what the underwriters are doing through their own survey bureau.

The WITNESS: Absolutely.

Mr. McGEER: What you are really putting up is this: I am writing a book and my co-competing author comes in and says well you have a very valuable manuscript there that would have been of great assistance to me if I could have had access to it because I am going to write a book on the same subject—we will say it is a history of Canada. Now, because I have prepared through research and through industry a history of the Dominion of Canada—

Mr. MARTIN: Will you allow me to ask a question?

The CHAIRMAN: Order, please.

Mr. MARTIN: I want to ask him a question.

The CHAIRMAN: With Mr. McGeer's permission.

Mr. MARTIN: That is understood of course. Every time I get up apparently I am called to order.

The CHAIRMAN: We want orderly discussion.

Mr. MARTIN: I am asking Mr. McGeer if he will permit me to ask him a question?

Mr. McGEER: Certainly.

Mr. MARTIN: I have said, Mr. McGeer, time and time again that we do not intend by this bill in any way to interfere with literary or artistic works, and that I am prepared to accept any amendment that will make that clear.

[Mr. J. A. Mann, K.C.]

Mr. McGEER: Now, Mr. Martin, I thought you were going to ask a question. You see, you are making a speech. I heard you the first time.

Mr. MARTIN: Might I ask a question?

Mr. McGEER: Yes.

Mr. MARTIN: If I give you the assurance that the bill can be so amended that it will indicate that it was not to apply to literary or artistic work, would that not take care of any objection you have?

Mr. McGEER: No, no, Mr. Martin. What I am saying is this; and I merely use the incident of authorship for the purpose of illustration; I heard what you said, that you were going to delete certain words, and my hearing is fairly good. What I am pointing out to you, gentlemen, is this; that the principle involved is abuse of the rights of individual enterprise which carry with them the right of ownership of property that comes from individual industry and enterprise. I have, we will say, written and copyrighted a history of Canada—or the author has. Someone else is doing the same thing. For some reason the first author who has prepared his history decides that he is not going to publish it until he is satisfied through further research work—and this amendment gives access to that industry and enterprise—because that is all the underwriters have done; they have said, Goad's are giving up the business from 1917 and we are going to join together and make our own service for our own use, if anybody does not wish to join our organization but wishes to form another organization he can take the Goad plans and develop his own revision. Now, this amendment goes a little further than that because in its wording I do not think the minister would have any privilege at all because it says: the rights conferred by this Act shall be deemed to have been abused if any business, trade or industry in Canada or any person or class of persons engaged therein is unfairly prejudiced by the conditions attached by the owner of the copyright. Now, that is a very different thing when it is applied to an unpublished copyright than it is when applied to one that is published and on sale. Where you have the publication on sale and some individual is denied the use of it the question of discrimination comes in between those who are given the use of it and those who are denied the use of it.

Hon. Mr. STEVENS: Would Mr. McGeer permit a question?

Mr. McGEER: Yes.

Hon. Mr. STEVENS: I pretty much approve of your argument up to this point. I am an individual possessor of a Goad plan down to 1917, for over 30 years, and it has been of great service to me in my business. These people buy the copyright, and then they say, we will copyright our own amendments and revisions and we will distribute them only to our members, and you, not being one of our members, can't get it. Your answer a moment ago to me was that it was open to me to make my own surveys and make revisions on the plans for myself. Now, I want to ask this question: is that a fair answer to the hundreds of individuals—quite aside from the non-board companies—there are hundreds of individual brokers, mortgage companies and real estate agents who make use of these plans—they are necessary to these hundreds of people in the conduct of their business. You say to these hundreds of people, go on and have your own surveys. We have ours, we have copyrighted them; you go on and make your own surveys. The point I want to make is this, that by exercising their right to purchase that copyright they also acquired the right of continuing the service.

Mr. McGEER: Of course, Mr. Stevens, I think this: that if the insurance business were carried on as an individual thing there would be a good deal of point to what you are saying. As a matter of fact we know that there are two large groups conducting the insurance business generally; that is, the board companies and the non-board companies; so that I hardly think that

in a case of this kind, as Mr. Martin has said, the amendment would be limited to this type of thing and would not include the other end of it where individualism comes in; because if the non-tariff companies cannot get this access to the industry and work and product of the labour of the board companies then you know perfectly well that there is nothing to stop their own surveys, and there is nothing to stop them developing their own maps, which they have already undertaken to do. They may have to do it now all the way from the start to avoid outright infringement of the law, as established in the recent case under the Copyright Act. But, they can do that thing. There is nothing to stop them. What I say is that this amendment goes a great deal further than the patent law. The patent law only gives the minister the right—

Mr. MARTIN: Yes, sir.

Mr. McGEER: The patent law only gives the minister the right to move when through a monopoly ownership a patent being abused somebody is denied the right to do the thing that he is anxious to do. Now, that is not the case here. I mean, these non-tariff companies do their own work. But in the case of a patent when a man has a monopoly on a patented article, then there is no way by which a prejudiced person can move—but I do say that we would have to be prepared in excepting this amendment completely to repudiate the whole principle of protection of the products of labour and industry which the Copyright Act was designed to protect and preserve.

Mr. MARTIN: Not at all.

The CHAIRMAN: A motion to adjourn is in order. Mr. Stevens, what is your idea as to the next meeting?

Hon. Mr. STEVENS: I move that we meet on Tuesday, Mr. Chairman.

Mr. MARTIN: I think probably we had better leave it to the chairman to decide when we shall sit again.

The committee adjourned at 1.05 o'clock p.m. to meet again at the call of the Chair.

SESSION 1938
HOUSE OF COMMONS

CA 11 X 13

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the
COPYRIGHT ACT

No. 2



TUESDAY, June 14, 1938

WITNESSES

Mr. Roderick S. Kennedy, National Secretary, Canadian Authors' Association, Montreal;
Mr. B. K. Sandwell, Editor "Saturday Night," Toronto;
Professor Pelham Edgar, University of Toronto, Toronto;
Mr. Ernest Fosbery, Ottawa;
Mr. J. A. Mann, K.C., Montreal;
Mr. W. B. Scott, K.C., Montreal.

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1938

MINUTES OF PROCEEDINGS

TUESDAY, June 14, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Cahan, Clark (*York-Sunbury*), Coldwell, Fontaine, Hill, Kinley, Kirk, Landeryou, Lawson, MacDonald (*Brantford City*), McGeer, Mallette, Martin, Maybank, Moore, Perley, Raymond, Stevens, Thorson, Vien, Ward, Woodsworth.

In attendance: Hon. Fernand Rinfret, Secretary of State; Mr. G. D. Finlayson, Superintendent of Insurance, Department of Finance; Mr. W. B. Scott, K.C., Counsel for non-tariff Insurance Companies licensed to do business in Canada; Mr. J. A. Mann, K.C., Counsel for Insurance Companies; Members of The Canadian Underwriters' Association, and representatives of the Canadian Authors' Association.

The Committee, resumed consideration of the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

The following representatives of the Canadian Authors' Association made brief statements, viz:—

Mr. Roderick S. Kennedy, National Secretary;

Mr. B. K. Sandwell, Editor of *Saturday Night*, Toronto;

Professor Pelham Edgar, Victoria College, University of Toronto.

Mr. Robert Fosbery, member of the Royal Canadian Academy of Arts, also made a statement.

Hon. C. H. Cahan addressed the Committee on matters related to the Copyright Act.

Mr. J. A. Mann, K.C., was recalled and further examined.

At 1 o'clock the Committee adjourned until to-morrow, Wednesday, at 11 a.m.

R. ARSENAULT,

Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277.

June 14, 1938.

The Standing Committee on Banking and Commerce met at 11 o'clock, Mr. W. H. Moore, the chairman, presided.

The CHAIRMAN: Order, gentlemen.

Hon. Mr. CAHAN: Mr. Chairman, when you open the committee for business, there are a few comments I would like to make which arise out of an experience of five years as a minister of the crown dealing with this subject when similar matters were up for consideration but no definite action taken; and I would like to explain that to the committee because that might be helpful.

The CHAIRMAN: Well, gentlemen, at the last meeting of the committee in which we discussed this matter there were present representatives of the Canadian Authors' Association. Unfortunately, we were not able to hear them at that time. They are now in Ottawa in annual convention and have asked that they be given priority of hearing this morning. I suggest that we hear the Canadian Authors' Association first and then proceed with the discussion of the bill. Is that the pleasure of the committee?

Mr. KINLEY: Except, Mr. Chairman, that in view of the fact that a former secretary of state—

The CHAIRMAN: I think that Mr. Cahan agrees that the authors should be heard first. Is that correct?

Hon. Mr. CAHAN: Oh, yes, undoubtedly. I do not think they will in the slightest be prejudiced by any bill that can pass this committee or the House, but just the same we should hear them.

The CHAIRMAN: I will call on Mr. Kennedy.

R. S. KENNEDY, called.

The CHAIRMAN: Explain your position, Mr. Kennedy.

The WITNESS: I am National Secretary of the Canadian Authors' Association which is a body of some 800 members extending across the country and joined together partly to protect our interests in such matters as this and partly to assist each other in writing better and, perhaps, more work. I was present at the meeting on Thursday morning, and I listened attentively to the very strong and cogent arguments which were advanced by witnesses and by the members. The opening witness, Mr. Scott, started by informing you that they had no desire whatever to do anything to damage the interests of authors, writers of novels, prose, poetry and artists; and they have been most accommodating and considerate in that matter. We have had many pleasant conferences trying to get ourselves excluded from the working of this amendment. But that same gentleman used the words, "We will exclude genuine authors from this Act if the English language is broad enough to do so." Now, we claim to be expert in the English language, and we do not feel that the English language is broad enough to include everything in the world except these underwriters' maps which are the cause of this amendment—to exclude everything but them without mentioning them. I am as specific as I can be, and many learned

gentlemen whom I have consulted agree with our position, if I may call it so, and have done what they can to help us, but we are still not satisfied that there are no loopholes. But in the mimeographed amendment which was submitted to us for quite a brief glance there suddenly comes into my mind one item purely connected with a member of this association, Mr. Deacon, of Toronto, who published a literary and historical map of Canada, to whom those words can apply, because it is for purely commercial purposes, it is for sale. It is difficult to exclude everything except underwriters' maps, going around and around the subject.

We believe that the sponsors of the bill have done what they can for us. We ask you to consider this, that the Copyright Act is the magna carta of authors. Authors, like most owners of property, do not depend upon ordinary principles of common law and general usage for the protection of their property. Our property would be of no profitable use whatever if we could not have the Copyright Act to back us. Any profits from literature in practice depends on this Act. That is why we are so filled with this suggestion that for purely commercial purposes—a purpose that has been going through the courts and I believe is still before the courts or is about to go before the courts—for that specific purpose our magna carta should have a special exception made in it, because if a special amendment can be made to exclude copyright maps and plans from the protection of this Act somebody could come along a year from now with an amendment to exclude something else. It opens all kinds of loopholes.

Now, I will conclude by saying as strongly as I can that while we appreciate the efforts of the sponsors of this bill, we are strongly and unanimously opposed to the use of this bill instead of some other direct Act or some other amendment which would directly mention what is actually aimed at to get from one group of underwriters the use of plans for another group of underwriters.

We are in convention in Ottawa, right at the Chateau Laurier, and in order to show that we are unanimous in this matter I have asked to come with me several prominent persons who are members of our association and very active members. I have with me to-day Professor Pelham Edgar, professor emeritus of English literature at Victoria College, University of Toronto, an ex-president of the association, and a very active man; Mr. Leslie Gordon Barnard, our present president, the author of two books and innumerable short stories, and a gentleman who lives by what he writes and nothing else. If he cannot sell his work profitably and have the monopoly of his work he does not eat. We also have with us Mary B. Weekes, of Regina, author of many well-known magazine articles, and a series on the buffalo hunters which has been given on the radio recently. She is very prominent in western circles and is ex-president of the Regina branch. We have Mr. A. K. O'Brien, K.C., one of our honorary council, and the only reason he is not speaking for us to-day is that we want to appeal to you as authors who have no other help except the justice that you please to give us. Now, gentlemen, you are going to listen to innumerable complicated and, perhaps, learned arguments; you are going to hear the whole history of the Goad plans again reiterated, and don't forget that the authors of Canada depend on your sense of justice.

(Written submission by Mr. Kennedy printed as an appendix to this day's proceedings).

The CHAIRMAN: Now, gentlemen, are you ready to hear these representatives of the Canadian Authors' Association?

Mr. KENNEDY: Mr. Chairman, Mr. Sandwell, the editor of *Saturday Night*, would like to say a word to you.

The CHAIRMAN: Come up here, Mr. Sandwell, and don't say one word; we want to hear more than one word from you.

[Mr. Roderick S. Kennedy.]

Mr. B. K. SANDWELL, called.

The WITNESS: Mr. Chairman and gentlemen, I have nothing to add to what our national secretary has said, except to emphasize the point that we authors feel that any innovation of the copyright rights are defined in the existing statute, no matter how it may be limited, no matter how it may be curtailed, is a precedent to other innovations, and we feel we must resist any such innovation on general principles, whether it affects our particular type of work or not, because any innovation that does go through this year is likely to be followed by an attempt at innovation next year which will affect our type of product.

Mr. VIEN: Your first line of defense is on the Rhine.

The WITNESS: Thank you, Mr. Chairman.

Professor PELHAM EDGAR, called.

The WITNESS: Mr. Chairman and gentlemen, I am just speaking in confirmation of what has already been said. There has been absolute unanimity of opinion, and I think the case has been forcefully presented. I cannot think of any other aspect of the matter to present to you, sir, but I am strong wholly on personal and public grounds in my approval of the attitude my association is taking.

Mr. ERNEST FOSBERY, called.

The CHAIRMAN: Mr. Fosbery, for whom are you speaking?

The WITNESS: The Royal Canadian Academy.

Mr. MALLETT: Are you principal of the Lower Canada College?

The WITNESS: No, a cousin.

Mr. Chairman and gentlemen, we have just heard from the authors. The authors earn their living by dealing with words; the artists with their paint brushes and etching needles, the tools of their trade. I have not the facility with words that authors have. I was very glad to hear the views of the artists so well expressed by the authors. I was in at some of the meetings between Thursday and to-day that had to do with adding something to the present bill to protect the authors, and the formal words which were drawn up seem to me to protect the artists; but I am one man representing over one hundred artists in Canada who are members of the Royal Canadian Academy of Arts, and through them all the artists interested in this matter; and I am not a lawyer. I tried over the week-end to have our lawyer in Montreal to consult and to receive instructions from the academy as to how I should proceed. In general, a week-end is a bad time for anything of that nature. However, I have here a very brief protest from the artists which I prepared for Thursday morning last before the proposed amendments were heard and when the bill was in the state first presented. The bill, even with the proposed changes, may, I suppose, be considered as more or less in a fluid state, and I feel it important that you have before you during your deliberations the views of the artists to whom copyright is a very important matter. I felt that before reading the protest this explanation was due to Mr. Paul Martin, M.P., who, I am convinced, is as anxious as the artists that their protection be in no way diminished. I expressed to Mr. Martin my feelings, just as the authors have, that any change was not desirable; it was not desirable to open the door no matter how specifically the artists were excluded from the change.

This is the protest:—

PROTEST BY THE ROYAL CANADIAN ACADEMY OF ARTS against the passing of Bill 124—An Act to amend the Copyright Act.

Mr. Chairman and Gentlemen:

I come before you representing the Royal Canadian Academy of Arts, and, as a member of the standing committee on copyright, to present the unanimous protest of the committee against the passing of bill 124.

The Royal Canadian Academy was founded in 1880 and since that time has been the national organization representing the artists of Canada. It consists of painters, architects, sculptors, etchers and designers, more than one hundred in all, chosen for outstanding work, and comprising in its membership practically all the outstanding artists in Canada of whatever school of thought, and with a membership extending from coast to coast.

We are advised by our lawyer whom we consult on all matters relating to copyright that, if the proposed amendment were to pass, an artist might be forced to sell the right of reproducing a work of art.

Gentlemen, that provision would open the door to very grave injustice to the artist. His name as an artist is the source of his livelihood and his works of art are the means by which he makes a name. They are his own creations, a peculiarly personal expression of his thought and his emotions, and, so, peculiarly his own property. This fact is recognized by the copyright law as it stands, in that, though an artist may not have applied for copyright, and may have sold the work of art to someone else, the right of reproduction is still vested in the artist. Now, gentlemen, no one should be given the right—on whatever pretext—to say to the artist, “Here is something that you have created; you *must* sell me the right to reproduce it so that I can make some money out of it.”

And the injustice would not be confined to his being forced to sell something that he did not want to part with. In the transaction he would lose control of what use the reproduction might be put to; and, also, control of the quality of the reproduction.

Since an artist's livelihood depends on his name as an artist, and his works of art are the means by which he makes a name, it is naturally very important to him that any reproductions of his works should worthily represent them. Inferior reproductions might well constitute a gross libel on his work and, so, impair the name as an artist on which he depends for a living.

There are many other ways in which the amendment would be detrimental to an artist, but I will take up your time with only one. Let us suppose that a portrait painter had painted a portrait of your little girl, aged three or four, and to better express the vitality or the grace of the child had painted her playing with her toys or with a pet dog. Such pictures are often very popular. *You* might object to having this picture reproduced, but through the artist's inability to protect you, you might be subjected to seeing very inferior reproductions of it on soap wrappers advertising Bilkin's Baby Soap, or used in any way the reproducer thought would be profitable to him. An important part of the value of a work of art consists in exclusive ownership, and it would tend to impair the price an artist would get for his work if all works of art were liable to a forced sale of their copyright.

These are some of the reasons for the protest we have made against the passage of this bill.

The CHAIRMAN: Mr. Cahan, will you come to the platform please?

[Mr. Ernest Fosberry.]

Hon. Mr. CAHAN: Mr. Chairman, I am a member of this committee, although I regret that I have been unable to attend its meetings at all regularly. I thought it my duty to present to you, and the other members of the committee, certain matters which are material to this discussion, which came before me when for five years as a minister of the crown I had the supervision of the administration of the Copyright Act.

This particular controversy between two classes of fire insurance companies never came before me, but other similar questions did arise, and I felt it inexpedient to deal with them because, as the present Secretary of State (Hon. Mr. Rinfret) is well aware, for two years prior to my leaving office the International Convention on Copyright was postponed from year to year and I anticipated that these matters would be dealt with by an international convention, and perhaps relieve the Department of the Secretary of State from undue responsibility in the matter; but, owing to impossibility of agreement among the several governments' members of that convention, that convention has not met, and I do not know whether it intends to meet during the present summer or not.

Hon. Mr. RINFRET: I may say, on that point, that there is no indication that the convention will meet at any time. It has been indefinitely postponed.

Hon. Mr. CAHAN: Thank you.

The difficulty arises out of certain clauses of the present Copyright Act. In section 2, clause (C) of the Copyright Act a "book" is defined to include any "map, chart or plan separately published." "Literary works" is defined by section 2, clause (N) of the same Act to "include maps, charts, plans, tables and computations;" and our difficulty in the department arose out of these two definitions, and of the judicial interpretation that has been given to the word "publications" as used in the present Copyright Act, which decides that "publication" in certain cases is not publication to the public; that it may be limited by circulation among a certain limited number of persons; that such limited circulation is not "publication" within the meaning of section 3 of the Act. And the question arises, should the Act be amended with respect to the definition of "publication"? "Publication" in section 3, subsection 2, is defined as follows:—

publication, in relation to any work means the issue of copies of the work to the public.

There is no definition as to what is meant by the "issue of copies of work to the public," except judicial interpretations in various decisions. Courts have held that the issue of "plans, tables and computations"; to use the exact words of the definition; that the issue of "plans, tables and computations" to a selected group of 50 or 100 or more persons engaged in the business of fire insurance, or in life insurance, or certain other groups to which I will make reference, does not constitute "publication"; although, this would enable the owner of a copyright to circulate plan, or a computation or a table among hundreds of his own clientele of a particular group. That would not be regarded as "publication" within the meaning of the Act. And this has enabled in this case a group of fire insurance companies, or their agents or brokers, to have access to, and to use, these "plans, tables and computations" with such limited publication, without being "publication" within the terms of this statute.

The same definition of a "literary work" applies to plans of cities and towns, not only as in the case of the controversy before the committee, but also for the use of life insurance computations, engineering formulae, arithmetical or trigonometrical formulae, or computations or tabulations which are of general public interest, and necessary to the technical and scientific development of, and the application of ascertained scientific principles. It was that phase of the case that came before me. Therefore, I think that one of the vital considerations for a committee studying this bill is to determine the applications and restrictions which should be applied to ascertain the meaning which is now determined by the word "publication" as used in this Act.

Really, the gist of the controversy as it came before me was as to what is "publication." The judicially determined and restricted application of the meaning of the word "publication" as used in the Copyright Act, enables any such group or association to impose any terms they see fit upon users of their copyright, such as compulsory membership of any such group or association, or the compulsory adherence to certain conditions of insurance, or tariffs for insurance; or to certain conditions and tariffs with respect to the use of scientific, medical and surgical knowledge as ascertained, and thereby secure a compulsory association or agreement in respect to the carrying on of such business of insurance, or such other professional work, as may amount to undue restraint of the business or of professional work, which restraint may not be in the interests of the whole body politic, the general people.

That is one of the considerations oftentimes imposed for a licence to use copyrighted "plans, tables and computations." Now, copyright is used in certain cases to compel compulsory membership in a group or association, and compulsory adherence to certain fixed tariffs or rates; whether they be rates imposed by fire insurance companies or whether they be rates or tariffs for life insurance companies, or whether they be tariffs for professional fees in certain surgical operations or in the use of certain medical processes.

In this particular controversy, if the issue of copies of any "plans, tables and computations" to members of a special group or association and their agents is deemed to be publication to the public and a definition is inserted accordingly in the terms of the Act, then the problem which has been raised before you is practically solved. But, proper and adequate compensation should be paid to the licensee of any copyright, even although it be a copyright of plans, or of tables, or of computations, or of scientific or trigonometrical formulae, or of medical or surgical processes. Then, it must be admitted that proper compensation should be paid therefor; and I think it must be admitted as well that in such cases if the meaning of "publication" is more carefully defined in such cases the amount of such compensation should be determined by the Commissioner of Patents, acting under the minister in accordance with section 30 of the Act as amended by section 8 of the Copyright Act of 1931; which is chapter 8 of the statutes of 1931. That amendment of section 30 now reads:—

30. The Commissioner of Patents shall exercise the powers conferred and perform the duties imposed upon him by this Act under the direction of the Minister, and in the absence or inability to act of the Commissioner of Patents the Registrar of Copyrights, or other officer temporarily appointed by the Minister, may as acting Commissioner exercise such powers and perform such duties under the direction of the Minister.

Therefore, if it comes to a decision as to the compensation which should be paid for the use of copies of such plans or computations, it should be a matter to be investigated first, I suggest, by the Commissioner of Patents. My experience as a minister of the crown is that a minister has no time whatever to deal with other than general policy. He would not have the time to conduct these investigations under the Patent Act, or under the Copyright Act; and therefore parliament in its discretion in the Patent Act provided that the investigation and first decision should be given by the Commissioner of Patents, who is also in charge of the Copyright branch, and that there should be an appeal from his decision to the Exchequer Court, and so on to the Supreme Court of Canada for final decision. That, it seems to me, should be the procedure in this case. If the Act is amended there should be an appeal in respect to any compensation or royalty as fixed by the Commissioner of Patents, and that first appeal should be, I suggest, to the Exchequer Court.

[Hon. Mr. Cahan.]

Mr. VIEN: Would you see any objection to an amendment being introduced with the limitations you have mentioned?

Hon. Mr. CAHAN: I see a great objection to the proposed amendment, and to the form of it. I am sure any minister or any deputy minister who has had to do with the administration of public statutes will admit that the greatest difficulty in administration is the confusion arising from amendments to public statutes which have been made without due investigation and due consideration of the bearing of such amendments upon other clauses of the Act.

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. CAHAN: And therefore, I suggest—

Mr. VIEN: The gist of the bill, if I understand it rightly—I was unfortunately absent last week and I speak with a great deal of ignorance on the subject—but the gist of the bill if I understand it rightly is to amend the Act wherein it is now provided that you cannot appeal—

Hon. Mr. CAHAN: Mr. Vien, if you will permit me. I am prepared to discuss the proposed amendment when it is before the committee. It is not before the committee yet, and I wish to make certain statements dealing with the matter generally, and not particularly.

Mr. VIEN: Certainly; pardon me, go on.

Hon. Mr. CAHAN: To sum up: On the point of amendment to the Act. An amendment to the Act, even to satisfy the promoters of this bill, should be confined to an amendment dealing with these three or four words which cover every controversy which came before that department in all the time I was there, five years. The controversy in regard to this section—that is, dealing with literary works—was that it includes, “maps, charts, plans, tables and computations.” I can understand how a map may be an essential part of a literary work, as we commonly understand it; and charts, plans, tables and computations might on occasion similarly be considered. But, the real issue here is, how far any person or company should be protected by copyright with respect to charts, plans, tables and computations which are all of great public interest; how far the owner of the copyright should be able to use his copyright to promote private circulation of copies, circulation among his own clientele, even though it is circulated among hundreds of people, as it is in many cases other than this, and still claim that such circulating among hundreds of people is not “publishing” within the meaning of the Act.

As to whether there should be some restriction upon that is a matter for consideration, and I think the committee in considering this temporary solution of one phase of the question should consider some of the collateral questions which arise in connection with tables and computations. For instance, “plans, tables and computations” which are used exclusively by groups for the mere purpose of compelling those who wish to use these “plans, tables and computations” to become members of a group, to accept certain conditions of practice in their profession, and to impose certain common tariffs as a result of being a member of the group. You will find, if you study the question, and I do not pretend to have any special knowledge aside from the fact that I lived with the Act for five years and heard all sorts of delegations in regard to it; but I am convinced that the whole question comes right there, with regard to what should constitute “publication.”

Mr. MAYBANK: That would involve, Mr. Cahan, for instance, would it not consideration of those publications by official advising concerns, such as the well known Bradstreet report, and that sort of thing?

Hon. Mr. CAHAN: It might, if they come within that definition of “plans, tables and computations.”

Mr. MAYBANK: Yes.

Hon. Mr. CAHAN: There are all sorts of matters concerned there. Modern scientific progress depends upon the use of arithmetical, and trigonometrical and other data which is now in the sole control of particular groups and protected by copyright; because the issue to members of these groups is not deemed to be a "publication" within the meaning of the Act. I am just putting the case before you. I am not advocating, one way or the other. I am simply showing how it arises, and I think the committee must consider it, and to deal with it effectively must deal with all the collateral problems arising, and it is quite possible that this suggestion you have made may be a collateral problem which would come in. There are certain rights to be protected. My own view about it that large sums of money have been expended oftentimes in developing these formulae and mathematical computations; and those who are entitled by any statutory amendment to use these intellectual and scientific productions should be compelled to pay adequate compensation.

Some Hon. MEMBERS: Hear, hear.

Mr. THORSON: Your view I take it is that those persons who want to use these exclusive plans should have to pay adequate compensation, but that the owners of the plans should not be able to use their copyright rights in such a way as to restrain trade or unduly force other people into membership in organizations of those who own the copyright in these plans.

Hon. Mr. CAHAN: All I will say is this; I am not giving my own personal opinion. I intend giving that when it comes time for us to discuss this amendment. But I do say that five years of experience has informed me that there are complaints throughout the country, especially in scientific, engineering and other circles, that the Copyright Act is being abused for the purposes of enabling groups to establish what are really "combinations," not only in restraint of trade but in restraint of professional activities. That is a matter which it seems to me is most important, and I think the committee should consider it before reporting upon the bill. I think the bill, even in its present form, would not satisfy me. I think that the bill deals too generally with the root of the problem which arises, as I have suggested, and which affects other groups quite as important as the group dealing with fire insurance. So speaking personally I will say that my opinion is that amendments of this kind should be proposed, not to the House in the way this was proposed; they should be brought first to the attention of the Secretary of State who is surrounded by a number of men who have spent their lives dealing with copyright matters, and who are more or less familiar with the complexities and intricacies of copyright legislation and of the International Agreements on which we purpose dealing in such legislation. I think it should come in that way, and I think the promoters of such a bill should convince the department first, or attempt to convince the department. I am sure if the officials of the department may not be convinced they would give such special assistance as they could in placing the issue properly before parliament, and enable the promoters to see the implications of the issue which they have raised in all its bearings. That is all. For instance, if I am allowed to make a remark on another case, the bill before the committee at its last session was withdrawn. I was ill and could not attend; but I am absolutely convinced that if any of those parties who made their complaints had written a similar complaint to the Department of the Secretary of State, which is the department to which complaints should be made, the evils complained of would have been remedied. There is not any doubt whatever about it as to what department of government the complaints should be made. The old orders in council constituting the Department of the Secretary of State for Canada designated the Secretary of State for Canada as the medium to which such complaints should be made, and that department also has supervision and control of the Dominion Companies Act and the incorporation of companies by Dominion statute. The Secretary of State could have settled the

[Hon. Mr. Cahan.]

complaints in any case in twenty-four hours as I did once or twice, by simply calling the attention of the judge in charge to certain matters complained of, and then they were remedied at once. If they had been brought to the attention of the Chief Justice of the city of Montreal, which is the place where these complaints arose, the Chief Justice of the Superior Court of the city of Montreal would have settled these difficulties once for all within forty-eight hours after he heard of them, and no amendment to the Act would be necessary to secure proper administration, as the means are already available.

Therefore, so far as the alleged complaint that is mentioned in this case is concerned, it is not an administrative matter; it is a matter of legal definition by statute and of the judicial interpretation of that definition. There lies the gist of the matter, and if it is necessary in the public interest—and after all parliament must consider the general public interest—that an amendment should be made, amendments to two or three clauses of the Copyright Act would remedy this whole controversy without bringing in to any extent such associations as the Authors' Association and others. They should not be disturbed, and it is admitted, of course, that they should not come within this proposed amendment.

Thank you, gentlemen.

I hope I did not intrude, but as a member of the committee I felt that I had a perfect right, if not a duty, to present to you, sir, and my colleagues on the committee, the fact that this is not a new problem. It has arisen from year to year, and is only related to particular clauses of the Act.

Mr. VIEN: Mr. Chairman, I tried to follow the honourable gentleman and I appreciate the point that he has developed; but my difficulty is to find that this is the point raised by the bill. The committee has not been requested to revamp the Copyright Act or to change the underlying principles. In section 14 it is provided that any person can apply to the minister "for a licence to print and publish in Canada any book wherein copyright exists, if at any time after publication and within the duration of the copyright the owner of the copyright fails to print such a book or cause the same to be printed"; and (b)—and that is the point, and I think it is the only point—"to supply by means of copies so printed the reasonable demands of the Canadian market." The complaint of the sponsors of the bill is that the people they represent are part of the public of Canada and are not properly supplied by the owners of the copyright, in this case the Goad plan. Therefore the question which arises, is, should not this section 14 be amended so as to provide that the owner of a copyright should be compelled by some procedure or other to sell to another applicant the object of the copyright under reasonable terms and conditions. Therefore I cannot see that there is such a vast principle involved as has been urged by the honourable gentleman. It might be my own density and ignorance of the matter, but my view is that it should not be necessary to buy a thousand copies or to print a thousand copies to have the right to use the principal object protected by copyright; that there should be some smaller procedure indicated whereby the applicant can obtain his relief. If I am mistaken I should like to be shown.

Hon. Mr. STEVENS: What is before the chair?

Mr. THORSON: Are there any more witnesses to be heard, Mr. Chairman?

The CHAIRMAN: We shall find out. Mr. Stevens asks what is before the chair. As I understand it, Bill No. 124, An Act to amend the Copyright Act, as indicated, is not before the chair.

Hon. Mr. STEVENS: Not yet.

The CHAIRMAN: The matter before the chair, submitted by the House, is the subject matter of the bill.

Mr. THORSON: Exactly.

The CHAIRMAN: The bill has not had a second reading.

Hon. Mr. STEVENS: That is what I want to make clear.

The CHAIRMAN: It has been referred to us to study the subject matter.

Mr. THORSON: Therefore the principles involved are before us rather than—

The CHAIRMAN: The bill itself.

Mr. THORSON: —the actual bill.

Mr. MAYBANK: And of all of its collateral problems are likewise, it seems to me, included.

The CHAIRMAN: Yes, I think that is so.

Mr. THORSON: The principles involved.

Mr. VIEN: Does it follow that we are not going to report the bill?

Mr. THORSON: Certainly not.

The CHAIRMAN: I think it follows.

Mr. VIEN: We cannot report the bill?

The CHAIRMAN: The bill is not before us.

Hon. Mr. RINFRET: I think I made it very clear the government did not desire to pronounce on the principle of bill 124, so that the proper procedure is to discuss the matter on which—

Mr. THORSON: And the principles involved.

Hon. Mr. RINFRET: It is not expected that this particular bill be reviewed, but that a bill might be drafted by the committee after the committee has disposed of the principles. I think that is quite clear.

Mr. VIEN: I had not understood that.

Mr. THORSON: It is quite clear.

The CHAIRMAN: Are there any other witnesses with regard to it? Unfortunately, Mr. Martin, who is the sponsor of the bill is not present. He is unavoidably absent, as a matter of fact.

Mr. THORSON: Do counsel representing the parties on the opposing sides of the principle wish to say anything in addition to what they said the other day?

The CHAIRMAN: Is it your pleasure to hear evidence first from counsel supporting the act to amend the Copyright Act which is not before us?

Mr. THORSON: Exactly.

The CHAIRMAN: As I recall it, Mr. Mann was speaking when the committee adjourned. I do not know whether Mr. Mann has finished or not.

Mr. MANN: Mr. Chairman, I had a very few words to say at the last meeting.

The CHAIRMAN: Shall we allow Mr. Mann to finish his statement?

Mr. THORSON: I believe we should allow Mr. Mann to finish his statement. Then, if Mr. Scott has anything to say we should hear from him as well.

Hon. Mr. STEVENS: I believe, Mr. Chairman, I should like to suggest as I did the other day, that we should try to focus our attention on the Copyright Act rather than disputes between bodies or between opposing interests. Let us try to focus our attention on the reference, namely the Copyright Act.

Mr. KINLEY: You cannot get away from the bill.

Mr. THORSON: You cannot get away from the controversy that brings this matter to our attention.

Mr. KINLEY: And the practical application of it.

J. A. MANN, K.C., called.

The WITNESS: Mr. Chairman, you and the other members of the committee were particularly patient with me last Thursday when this proposed bill was before the committee; and it has been suggested that perhaps as a result of zeal or over-enthusiasm that I gave voice to expressions that were, I assure you, not in the slightest degree intended.

[Mr. J. A. Mann.]

Mr. THORSON: Pass on to something else.

The WITNESS: The Hon. Mr. Cahan has taken out of my mouth a great deal of what I had intended to say this morning; but as Mr. Thorson has remarked, it is a very difficult thing to dissociate oneself from the actual controversy which brings about the proposed bill which, I think, as you have stated, is not before the committee.

At the last session of this committee I believe there was a misunderstanding as to the question of the production, publication and sale of the original Goad plans. I thought I had made it clear and I tried to make it clear, and I shall try to make it clear again that Goad's plans were on sale to the public up to 1931. Goad published insurance maps with a great many other types of maps and in competition with a great many other map companies, up to 1917. In 1917 they decided to go out of business, and they did go out of business and did not publish any more maps, but they had a very large stock. From 1890 to 1925 the non-board companies purchased over 6,000 of Goad's maps, and my friend Mr. Scott quite frankly the other day stated that they had all the old Goad maps. What happened was that Goad's in the perfect freedom of action which I think they have, went out of the map producing business in 1917 and the Underwriters' Association, the Canadian Underwriters' Association, instead of employing another map company or another atlas company to make their maps decided to form their own plan department, and they formed their own plan department in 1917. From that date on, for 21 years, they have proceeded to make their own maps; but in contradistinction to what the Goad's did, the Underwriters' Association furnished their maps only to the members of the Association; whereas Goad's had sold them to all members of the public. I take it nobody would gainsay it was within the freedom of action and liberty of the members of the Association to contribute to a map department of their own and to make their own maps, and to confine the use of those maps to their own members. As far as Goad's maps are concerned which ceased to be compiled after 1917, they have always been available to the public. They are available to-day to the public; and under the provisions of section 14 of the Copyright Act, the public may get copies of all the Goad's maps.

Now, sir, what we did was not to force, or suggest that the non-board companies must come into the Canadian Underwriters' Association. We exercised our liberty and freedom of action and made our own plans. The Canadian Underwriters' Association owns the plans that they made from 1917 on, and they are original works made from original surveys, original signs, symbols and fire reference numbers, and they are copyrighted for the use of the Canadian Underwriters' Association. The non-board companies—

By Mr. Maybank:

Q. May I interrupt you there. You went ahead as a group of individuals and made your own notebooks, your own maps for your own use. Did you formally seek copyright or did you rest simply in the inherent copyright?—A. We rested, undoubtedly, on the common law copyright which exists to-day, I believe, as a question of law, and which has become statutory copyright by the Canadian Act of 1921. There has always been, and I believe I can state it without much fear of contradiction, the admission that in unpublished works there is inherent common law copyright.

Q. That is what you relied on for your protection?—A. We rested on that up to a given period. Later on we began to comply with the terms of the Act, and in addition to the common law copyright and in addition to the copyright law, to register our copyright. The courts, as you gentlemen all know, have decided that we have existing copyrights in all those maps and plans and rates and rate-schedules and rating manuals.

By Mr. Vien:

Q. To-day, a document or plan of this kind covered by copyright must be made available to the public upon certain terms and conditions, must it not?—A. No, Mr. Vien. The copyright in a work which has never been published, or in the terms of the Berne Convention, which has never been issued to the public, has vested in it the common law copyright, and there is nothing in any law in any part of the civilized world that can compel the owner of an unpublished work to give it to the public, because it has never become public property. Therefore the provisions of this Act do state in the clearest terms that copyright shall always subsist until publication, and that is a reiteration of the common law copyright which has existed in England for hundreds of years.

By Mr. Woodsworth:

Q. May I ask, are you resting your case on the common law copyright or on this later arrangement of registered copyrights?—A. That is a question that I can answer in just a very few words. Up to the 1st January, 1924, our own plans which had been made for the previous seven years, were protected by the common law copyright, because they had never been published. We never exposed them to the public—

By Hon. Mr. Cahan:

Q. Where does the common law copyright subsist in Canada? In what province is there common law copyrights? In the province of Quebec?—A. No, in the Dominion of Canada, Mr. Cahan.

Q. I cannot find anywhere reservation of common law rights with regard to copyright in the statutes. I think you have to resort to the statutes. We made a reservation in the criminal law with regard to common law, but we have not made it, I think, in the Copyright Act, and I think you have got to come to the Copyright Act for your protection.—A. Quite right, sir. But what I said was this: you will remember that the copyright law never existed in England until 1911. Then, the English Act of 1911, sanctified in statutory form the common law copyright that existed at the time of the passing of the Act.

Q. Not after the passing of the Act?—A. It became the original Copyright Act, sanctified.

By Mr. Thorson:

Q. It became a statute?—A. It became a statute. We had identically the same thing. We said in our Copyright Act, if copyright exists on the coming into force of the Act this copyright shall remain and be copyright under this Act.

Hon. Mr. CAHAN: That is clear.

By Mr. Vien:

Q. To all intents and purposes, practical purposes, we can take it for granted that we are dealing here exclusively with statutory copyright?—A. You are dealing here, Colonel Vien, exclusively with statutory copyright with reference to these plans.

Q. Yes. Now, I have another question to ask you which will enable me more closely to follow you. The Goad plans have never been properly published under the Copyright—A. I said the very opposite, sir.

Q. It has been published?—A. Yes. I think Goad's plans have been sold to anybody who chose to buy them up to the time Goad's decided to go out of business. At that time there was a large stock on hand, and they continued to sell them by way of trade and publish them to the public right up until the

[Mr. J. A. Mann.]

time that the stock was exhausted in 1930 or 1931; and I said, up to 1925—I have not time to pursue the Goad's registration further; but I said up to the year 1925 the non-board companies had purchased over 6,000 copies of Goad's plans. Now, when I say 6,000 plans, I mean 6,000 volumes, and some of these volumes contained 100 sheets. London, Ontario, contained 75 sheets; the volume on Toronto 100 sheets; the volume on Montreal 100 sheets. So you can see it probably runs into many, many thousands of sheets of Goad's plans which the non-board companies have acquired up to the time Goad's went out of business, and thereafter up to 1931—

Q. Therefore the question of publication does not arise?—A. In respect of Goad's plans, in no way.

By Mr. Woodsworth:

Q. With regard to your own plans you claim exclusive rights—I just want to be clear.

Mr. THORSON: Why not let him go on?

By Mr. Woodsworth:

Q. I want to be clear on this. I want to follow this as a member of the committee. I want to ask you a question with regard to your own plans. You claim exclusive rights on the ground of statutory copyright?—A. Yes.

Q. In order to do that you have to claim that your plans are published?—A. Unpublished.

Q. How can you claim copyright privileges if they are not published? That is the point.—A. Because the statute to which I am referring distinctly says that copyright shall remain at all times until publication.

Mr. VIEN: What section?

Hon. Mr. STEVENS: Mr. Chairman, can we not hear Mr. Mann?

Mr. THORSON: Can we not have a statement first?

Hon. Mr. RINFRET: Is not the complexity of this case based on the fact that the original plans have been published, or portions of them have been published, and therefore we are dealing with the two phases of the question, unpublished illustrations and published originals?

Mr. THORSON: Can we not have a statement on exactly that point, and after Mr. Mann has made his statement questions may be asked him?

The CHAIRMAN: Is that the pleasure of the committee?

Mr. MAYBANK: I suppose questions may be asked from time to time to get clarity?

By Mr. Vien:

Q. I understood Mr. Mann to state that the Goad's plans have been published up to a certain time, and that when they ceased to be freely offered for sale to the public, the underwriters having acquired—no I am wrong.—A. Yes, you are wrong. I do not want to contradict, I mean you are in error. We did not acquire any copyrights until 14 or 15 years afterwards.

Mr. THORSON: Let us hear what happened.

Mr. MACDONALD: At last Thursday's meeting this was gone into in detail. A lot of the members were not present. For the benefit of those who were not present I think Mr. Mann should state the present position with regard to the maps.

The WITNESS: I shall be very glad to do so. I have been trying my best to state the position of the Goad maps and the Canadian Underwriters' maps. The Goad maps and the Canadian Underwriters' maps are two different maps

altogether, as was suggested a moment ago. Mr. Scott, who represents the proponent in this committee, said quite frankly last Thursday that they had the Goad maps. I am informed that there are thousands and thousands of the old Goad maps—

Mr. SCOTT: I shall answer you later on that.

The WITNESS: I understood you to say they had them, but I do not imagine they have them all, but we have large quantities, enormous quantities of the old Goad maps. What I say is this, as far as the Goad maps were concerned, which were preserved by copyright, by Goad, by registration under the previous Copyright Act, the Act of 1875, which were preserved by registrations, we have no objections to offer to an application for a licence to publish Goad's maps. What we do say is this, the roads divided in 1917. Goads did what they had a perfect right to do; they decided not to continue further their map making business. They left the field free to the other map making concerns who were in Canada, and we, the Underwriters' Association, instead of entering into a contract for the continual supervision and revision and servicing of maps from the date that the Goads went out of business officially, decided to invest a very large sum of money into an organization to run a map making department. We incorporated the Underwriters' Survey Bureau Limited, a map-making organization organized for making maps for the members of the Canadian Underwriters' Association without any profit and without any intention of selling them to the public, and to use them upon the instructions of the map departments and the map committees and plan committees of the association.

By Mr. Vien:

Q. How do you style this work that you have so registered?—A. How do we style it?

Q. Yes. I understand that you have brought up to date the former Goad plan?—A. That is in some respects correct, but in other respects you are under a misapprehension.

Q. Would you tell me this: under what name to-day is your copyright exercised?—A. Under the name of Underwriters' Survey Bureau Limited.

Q. How do you style the body of the copyright that you own?—A. Fire Insurance Map of Montreal district No. so and so or section so and so, Fire Insurance Map of Toronto, Ottawa, Kingston, Belleville, Brockville, Quebec.

Q. But you no longer style it as the Goad plan?—A. The Goad plan has entirely disappeared from our plan; they are not Goad's maps; they are our maps.

Mr. THORSON: Mr. Chairman, Mr. Mann has been doing his utmost to tell us in chronological order just exactly what has happened. May we not hear this in chronological order so that we shall know exactly what happened from the commencement? I understand that Mr. Mann has got on to about 1931. May we not hear the whole thing without interruption, and in chronological order, so that we can have the matter in one piece and then ask Mr. Mann any questions we may desire to ask him, without interruption.

Mr. WARD: In order that we may get exactly what Mr. Thorson asks for—the whole story in chronological order—I think we should ask occasional questions.

By Mr. Ward:

Q. At this time, can you tell the committee what percentage of your present maps are composed of the original Goad plans; what percentage have you added to them since 1917?—A. I can only answer that by saying this, that that is a very difficult question to answer.

Mr. SCOTT: I gave that information yesterday.

[Mr. J. A. Mann.]

The WITNESS: I think not Mr. Scott; I do not think anyone could give that figure in this world, if I understand the question. You say: what percentage of our maps are new material and what percentage are Goad's material?

You will easily see how difficult that question is to answer. Let us take the city of Montreal and suppose there was a Goad's map of the block bounded by McGill street and three other streets in Montreal, you will quite easily realize that a Goad's map in 1925—eight years later—in no way represented the buildings, the fire risks, the fire hydrants, the fireproof walls or nature of heating or nature of lighting, the conduits and so on eight years later—it could not possibly be the same thing. What we did was this: there were four different types of plans in existence; those were before the exchequer court in the recent decision—first of all there was the original Goad's maps, a copyright of which we bought in 1931 when we took over the plans and the stock in 1931—that is seven years ago—or four years before the losses began. The second type of maps were maps, the skeleton of which was a Goad's map not of date later than 1917, on which had been superimposed necessary material indicating necessary reconstruction, fire protection and so forth. The third type of map was a map, the skeleton basis of which was a Goad's map existing at not later date than 1917, on which had been superimposed so much by stickers and painting and that sort of thing by our artists and colour operators that the map had become so cumbersome that it had to be entirely reprinted. So what we did was to make complete reprints of what in the aggregate represented a skeleton of Goad's map of date not later than 1917 based upon chain work and field work for the following eight or nine years, and then making a complete new sheet by printing, lithographing and colouring processes.

That was map No. 3. Map No. 4 is a map which is an entirely new document, has no skeleton basis of any plan of any sort; it is a map by original surveys, original painting, original artistic work, and is a completely new document altogether.

Now, what I say is this: Goad's maps, as they existed to 1917 from away back in 1880 or 1883 or 1884—those maps were protected in the Copyright Act in existence prior to the present Act of 1921, which became effective the 1st of January, 1924; they were protected by registration; all the certificates of registration are extant and are filed in the exchequer court in that litigation which is now before the supreme court. They were protected in that. Then, I say that under the law of copyright, as I view it and as I have so advised the underwriters and others, if I take a work that existed in 1917 in skeleton form and I build onto that work for a period of 1, 2, 3 or 10 years new material, other original surveys, original labour, original art, then I come to the end of eight years and I have a work which is an entirely new work, which is a new copyrighted work. No doubt you will realize, Mr. Chairman, that as the tremendous growth of this country took place in the form of buildings, fires burned down a brick building and a stone building took its place with all the fire-proofing information and regulation and new information with regard to fire insurance, and other districts grew up where before there had been fields and trees; small towns grew up requiring the making of a survey of those towns. Take the town of Noranda. That was the map that was the subject matter of an application to the Hon. the Secretary of State for a licence which was refused—a copyrighted map made from the original survey of the town of Noranda. Noranda did not exist as a town in the days of the Goads. We sent our chain men, our engineers, our surveyors up and we made an original map of the town of Noranda. Now, you will readily realize how little relationship that map had to a Goad's map that was not compiled after the year 1917. But let me assume that there had been a Goad's map of the town of Noranda showing a small wooden town hall, a fire station and some

mine buildings—let us say there was a Goad's map in existence in 1917. Let us say, that the cost of making those original surveys is not warranted by the few maps that would be required and the association members decide that they do not need to print a new re-surveyed map of Noranda, but take a Goad skeleton map, and you have the few mill buildings that are there, and we come to 1933 and we find another town there: the wooden buildings are pulled down and replaced by brick buildings, the sheds are down and replaced by three and four storey buildings; so we have to make surveys and examine every one of those buildings through knowledge of the ground, through our office, our colouring department, our engineering department. We take the skeleton map of Goad and we plot onto that skeleton map everything that exists in 1933 in Noranda, and that exists in 1917, and we wipe out all that did exist in 1917 on that particular skeleton, then I say that in law—and I am perfectly certain the ex-secretary of state will bear me out in this—that I have produced an original literary work. That is the work I say I want to protect.

MR. WARD: Mr. Chairman, this is just evidence that Mr. Mann and his association have a very clear idea of the amount of new work they have done. Mr. Mann, can you not tell us what percentage—5 per cent, 10 per cent, 12 per cent or 15 per cent—what percentage of the maps that you now claim rights over were original Goad's maps?

THE CHAIRMAN: Mr. Mann says he cannot give the percentage.

HON. MR. RINFRET: The original work can be procured.

THE WITNESS: The original work can be procured.

MR. WARD: It is a very important question.

THE WITNESS: I have here the assistant general manager.

By Mr. McGeer:

Q. The point that I think might be brought out if I asked a question would be this: Is there anything to prevent anybody else from going into Noranda and making an original survey and producing their own maps?—
A. Nothing in the world.

Q. Have you any monopoly?—A. In no way.

Q. Any monopoly of the right to produce the work?—A. In no way.

Q. Is there anything that would have prevented the non-board companies from taking the Goad's maps which were sold up to 1917 and building upon them this new document which you have mentioned has been developed by re-surveys and by changes and alterations?—A. Absolutely nothing, Mr. McGeer.

Q. Because, as I understand it, the non-tariff companies up to 1917 furnished the Goad's maps and they were their property and could have been used for a number of new surveys if they wanted to make them?—A. If they wanted to make them. Not only that, but you said up to 1917; I say right up to 1925. I gave you an estimate a few moments ago.

Q. I think, probably, that is not altogether correct, because I understood you to say there was no servicing of Goad's maps after 1917?—A. No, I say that Goad's maps of dates during and prior to 1917 were sold to everybody right up to 1925, and perhaps later.

Q. There is no controversy about that. The point I want to get at is who supplied the non-tariff companies with the information that was necessary to keep the Goad maps up to date after 1917?—A. Well, the answer to that—

Q. You did not supply them?—A. No. We never supplied anyone.

Q. So if they got any information to keep those maps up to date it must have been as a result of their own survey?—A. Well, it was either as a result of their own surveys if they made any—

[Mr. J. A. Mann.]

Mr. SCOTT: In the province of Quebec and the province of Ontario the agents act for both board and non-board companies.

The WITNESS: Some of them.

Mr. SCOTT: And down to 1934 when the association began to get greater control than they had before, those serviced plans that Mr. McGeer is referring to, Mr. Chairman, were supplied to every agent in the province of Quebec and in the province of Ontario—some 9,000 in number. They acted for both the board groups and the non-board groups, so they got all those serviced plans.

Mr. THORSON: Up to 1925.

Mr. SCOTT: No, up to the present time. The contention has arisen, because in the west different rules appertain from in Ontario and Quebec. The custom is now the separation rule, where the companies' agents—

The WITNESS: Here it is not in effect.

Mr. SCOTT: No. The association has tried to put it into effect in the provinces of Ontario and Quebec and have not succeeded. There is the condition of these agents representing the public in placing insurance, both the board and non-board companies, and inasmuch as they were agents for the board companies at the same time as they were for the non-board companies they have been serviced with all those plans. If they suddenly take those plans off the market all the companies, non-tariff companies, in the province of Ontario and the province of Quebec are either without agents or without plans.

By Mr. McGeer:

Q. There was no service offered by the non-tariff companies. It amounts to that. But as a result of the dual agency the non-tariff companies got this service without paying a cent for it?—A. Exactly.

Q. And that is what they wanted to do?—A. And that is what they have been keeping on doing.

By Mr. Maybank:

Q. There is one question I would like to ask. You have told Mr. McGeer that there was nothing to prevent the non-board companies from going in and making their own surveys?—A. Nothing whatever.

Q. Would it not be right to say that there was nothing to prevent them going in and making a relatively slipshod survey and guessing that the information they had in the book already was probably correct and consequently carry out their survey very much more cheaply, relying partly on their more or less slipshod work and the book which you people had prepared?—A. Quite.

Q. They could make that survey very much more cheaply?—A. They could make it, and it was only a question of the excellence of the services they retained in the field.

Q. Simply a guess of a surveyor, for instance, going over a line and seeing pegs that somebody else had put there and saying, "well, I guess he was right and I will accept that same spot as being correct?"—A. Certainly.

Q. They were in that position?—A. Certainly.

By Mr. Kinley:

Q. In your plans that you have now, is there anything upon them to indicate they are Goad's plans; are they not referred to Goad's plans?—A. No, sir, nowhere.

Q. In your contracts for insurance, in indicating the property insured, do you not quote Goad's plans?—A. No. We quote the Underwriters' Survey Bureau, and the plans state that they are the property of the Underwriters' Survey Bureau Limited and that for information in detail apply to certain

people in the map and plan department of the Canadian Underwriters' Association. There is no Goad address on any of them.

Q. I am under the impression that insurance contracts do refer to Goad's plans.—A. Of course, you will remember this: that might happen because if you will remember up to the time Goads went out of business, Goad's plans and Goad's maps and Goad's atlases were almost household words. For instance, their real estate plans were in various offices—in land surveyors offices—their atlases were published and sold and their fire insurance plans were published and sold. Goad was, undoubtedly, the biggest plan maker in this dominion and one of the biggest in England, because they operated in England.

Q. You have eliminated the name "Goad" from these plans altogether?—A. Entirely.

Q. I do not think the insurance contracts show it?—A. I will tell you that with a household word such as "Goad," its origin being up to 1917 Goad's plans, you can quite easily realize that the public may have got into the habit of expressing in insurance plans as Goad's plans. It is quite possible. It is not done in the east. It is not done in Ontario and Quebec as far as I know. I have never seen it, but it is quite conceivable that an agent may refer to Goad's plans, sheet No. so and so and block No. so and so. That is merely because the word "Goad" has grown up as a species of household word in the insurance art, having reference to the plan.

Q. Of course, the idea is Goad's; the plan idea is Goad's. You bought that in 1931.—A. Of course, you must realize that there are in this room to-day two gentlemen who have been engaged in the making of fire insurance plans completely independently of Goads.

Q. The fire insurance business of Canada used Goad's plans just as long as they possibly could?—A. Up to the time—

Q. 1935.—A. No, sir; up to the time they decided to go out of business. We did not use them at all after 1917, except as a bases for the revisions and the servicing of our members.

Q. This memorandum that has been submitted, I presume, by the promoters of the bill says, "It will readily be seen that while every insurance company in Canada has sets of the plans, the inability to purchase new copies and revisions only became acute between 1930 and 1935."—A. Perhaps that is correct. I think it is incorrect.

Q. I want to know about this: did the non-tariff companies buy these plans with the revisions up to 1932?—A. No; they photographed thousands and thousands of them. That is what we complained about in court, in the 1931 action.

By Hon. Mr. Cahan:

Q. Does not your claim to an exclusive right to circulate and use the plans which you prepared and have obtained a copyright for each sheet depend entirely upon judicial determination of what constitutes publication. The circulation of your plans which you have copyrighted to the thousands of agents throughout the country, probably 20,000 in Quebec and Ontario, does not constitute publication under the Act. Is not that the essential ground upon which you base your exclusive right to use and dispose of these plans?—A. Yes, practically that; but I must answer my friend Mr. Cahan this way, and it brings me back to what Mr. Cahan said. It is perhaps a mistake, or perhaps an enlargement of language to say that these plans have been circulated to 20,000 agents and so forth in Ontario and Quebec and through the Dominion of Canada. I am talking of the Canadian Underwriters' plans, which applies only to Ontario and Quebec. The western Canadian underwriters and the British Columbia board have non-intercourse to them. What the Canadian Underwriters do is this. When a member joins the association the member is entitled to as many plans as he makes application for upon an agreement to pay a proportionate cost

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of that number. Then, he has an agent, who is an agent of the board member, and the agent is entitled to the loan by the association of a copy of whatever plans he operates under in a district. He operates as that board member's agent; you will realize, Mr. Chairman, that the board member's agent may be a broker, broking loans for ten or fifteen companies, six or eight or ten of them are non-board companies. He secures insurance for all companies who will take it. Now, what is the result? He is in possession of the plan under a loan agreement. He says that he will use the plans for the purpose of the board company's business; but it is not human nature to expect that when he brokers a large risk or several risks of non-board companies that he is not going to use the plan that belongs to the association to get the information or the key and the rate from it. It is not human nature. That is why these agents of brokerage companies and non-board companies are in possession of the plans; but it is only because they are agents of one of the board companies.

Q. That is perfectly true, and I recognize that but the essential issue to my mind is the question of publication. You have a preliminary decision of a puisne judge, at least, that the circulation of your plan to all these agents and brokers is not a publication within the meaning of the section which I read.—A. Yes, that is right, sir.

Q. And it is upon that your exclusive right is sustained?—A. Yes, that is right, sir.

Q. One further question. You contend that it is not prejudicial to the public interest that you should retain a copyright which is not published in the sense I have mentioned within the meaning of the Act; that you should retain that copyright and use that copyright as a means of compelling all these outside brokers and agents to co-operate with your business exclusively and become associated with you?—A. Yes; but you see I do not know quite how to express it to the members of the committee, but I say that is not quite correct. There is nothing in the world compelling anybody to be a member of the Association.

Q. No.—A. The Royal Commission, you will remember—

Q. But you can compel them to become members of your Association in order to enjoy the privileges of using plans circulated and licensed by you as I have mentioned. To enjoy that privilege they must now, under the Copyright Act as it stands, become members of your Association, agree to the conditions of membership and to the general tariff which your Association fixes; is not that so?—A. I will answer it this way and say I want to go back to the time when the Goads went out of business. With the greatest respect, you advance the argument 21 years to 1938. They went out of business in 1917.

Q. I am not— —A. I want to say this: from the 1st January, 1918, to the 31st December, 1937, the Canadian Underwriters' Association for the servicing of their maps with their groups and their members and agents, spent \$2,112,588.61.

Q. Certainly.—A. What I say to you, sir, is this: if the non-board companies had not waited for 21 years and then raised this complaint or this shibboleth before this parliament, they would have had the business acumen in 1917 to do exactly what we did; they would have gone out and they would have taken the Goads plans which they had and invited somebody to service them for them—

Q. I agree with that, but it seems to me— —A. They could do it to-day.

Q. It seems to me the essential question before the committee is as to whether, with the conditions which now prevail in Canada, a non-board company should not be entitled to the use of these plans upon paying adequate and proper compensation to be fixed by a court after hearing the evidence as to costs. That is the essential problem.—A. Then, sir, the result of that would be that as the Act exists at this minute the non-board companies would then have what has been

used against us, a monopoly, and they could go to the minister or to the minister's commissioner and get a licence, and the result of the provisions of the Act are that they would have the sole right to publish in Canada the works in respect of which they have the licence.

Q. That is not my contention. You and Mr. Scott have raised a vital issue which has been raised with regard to groups other than the fire insurance companies.—A. Yes, sir.

Q. And that to meet any public prejudice that arises out of several sections of the Act, whole paragraphs of the Act must be redrafted.—A. I do not see how there is any way out of it. I think you are perfectly correct.

Q. I cannot see it either; but still the essential thing is as to whether you are entitled to this exclusive right by reason of the past judicial determination that circulation among thousands of people in Canada is not publication. That must be determined first. If that is sustained you are within your rights, and if it is not sustained then others have the right to participate with you in the product of your labour and your technical and engineering training and experience.—A. That is quite correct.

Q. But in doing so they must pay proper compensation, and it seems to me that should be determined by a court; but certain paragraphs of the Act must be redrafted in order to carry out clearly and definitely the desire of Mr. Scott and those whom he represents.—A. Yes.

By Mr. Landeryou:

Q. You claim the Underwriters' Association claims exclusive right to these plans because they prepared them themselves. Up until a short time ago I understand the non-board companies had access to these plans. Is that correct? —A. They have access to them to-day. They had access to them and they have copied and photographed tens of thousands of them. A board agent who happens to work for a non-board company, as I said a moment ago, has access to these maps, and he has loaned these maps to a photographing concern and there have been copies made of them, and the non-board companies have the copies. To amplify that I will give the instance of the Dominion Gresham Guaranty and Casualty Company, who made an assignment in 1928. They had a set of maps practically up to date. These maps were put up for sale by the liquidator. The Trans-Canada Insurance Company bought them in for \$5,000 or \$6,000. I have forgotten which. The board did not buy them in. They let them go, and they were bought up by the Trans-Canada Insurance Company. They are their own property, just as much as my hat or my coat is mine. They are their property, but they have not got the right to make thousands and thousands of reproductions. By copyright the right to make reproductions remains in the owner of the copyright.

Q. The question I should like to ask is this: the non-board companies claim there has been a tightening up. Can you explain to the committee the reason for the tightening up; is it simply because— —A. Yes, I would be very glad to do so, sir. We began to discover these photographic copies in very large quantities in non-board offices around 1929, 1930 and 1931. The evidence before the Exchequer Court was to the effect that until 1929, 1930 and 1931—I just forget which, I cannot tax my memory to that extent,—the board companies did not know that the non-board companies were wholesalesly photographing their plans and organizing volumes of them. The litigation was promoted against Massey and Renwick Limited, who were the agents and represented the largest of the non-board companies. The evidence showed there was an admission of 6,000 or 7,000 rates or rate-schedules and admission of several thousand reproductions of plans; and the court was given access in Toronto to books and volumes of plans that had been photographed, all our original plans, and in 1932 we pursued

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an investigation; in 1933 we continued the investigation, and in 1934 we took an action against the reproducing company, and a judgment was rendered by the Exchequer Court restraining the reproducing company from copying the plans of the Canadian Underwriters' Association. By that time the Canadian Underwriters' Association, in 1931, had acquired the copyright, even the right to produce and reproduce. We did not complain that original plans were in hands of non-board companies, that they had no right to keep them. They had a right to keep them, but we had acquired copyright, which was the right to reproduce or produce in 1931. Then, as I say, in 1934 an injunction was issued restraining the company from making any further copies and protests were lodged in all copying concerns in Canada. In an examination of the books of the commercial reproducing company we found 31 companies, not members of the Canadian Underwriters' Association, who had been getting reproductions of Canadian Underwriters' plans, and then we launched actions.

Q. I have just one more question. Did you offer to sell the information that you are preparing for practically nothing. Did you make any offers to these companies to sell them the information that had been secured?—A. If we did, I am not in possession of it.

By Mr. Kinley:

Q. You won that case in the Exchequer Court?—A. Yes; we were upheld in every single part of the claim.

Q. This legislation is to get over the judgment?—A. Which is now pending before the Supreme Court of Canada. I want to go further.

By Mr. Landeryou:

Q. You made no offer to sell this to the companies?—A. No. We maintain, as Mr. Cahan has quite fairly put it, that these are not public works; that they are issued only to the members; that they have never been exposed to the public for sale. They are issued only to our members. They are not retailed. Nobody can buy them. The members do not buy them. They contribute so much to pay the cost of reproduction.

Q. These are your exclusive maps?—A. Yes.

Q. You have no desire to make them public at all?—A. No, except to the 170 companies.

Q. The members of your Association?—A. Yes; but may I say this. Let me assume, Mr. Chairman, that the Supreme Court of Canada reverses the judgment of the Exchequer Court, and says that we have not secured copyrights, that we have no copyright interest in them, or they are public and subject to licence, what on earth is the use of this legislation? It is prejudging what the Supreme Court of Canada is going to do. It is prejudging that the Supreme Court of Canada is going to confirm the Exchequer Court. If it does not confirm the Exchequer Court, if it does the very opposite, reverses the Exchequer Court, we are wasting our time here and this legislation is useless, because they can then go to the commissioner, under section 14, and get a licence and they can ask that subsection 3 of section 14 be amended. It reads as follows:

Every applicant for a licence under this section, shall with his application, deposit with the minister an amount of not less than ten per cent of the retail selling price. . .

I do not know where they would get the cost of these plans.

. . . of one thousand copies.

They could make representations to the minister and say one thousand copies of the plan of Noranda would be useless. By subsection 3 they must say one thousand copies or such number of copies as the minister in the circumstances

shall deem to be just and equitable. Then the minister could say a hundred or fifty or seventy-five or two hundred.

By Mr. Vien:

Q. In the public interest, would it not be better or simpler if the owner of the copyright who claims protection on the copyright were compelled as part of his application and right to supply the public with such copies?—A. Well, that would be very simple—

The CHAIRMAN: Order, gentlemen.

By Mr. Vien:

Q. I am asking a question of Mr. Mann.—A. I will be very glad to answer. It would be very simple; if you wanted to turn upside down the Copyright Acts of the civilized world and enter into an agreement with 67 different countries, then that could be done; but you are speaking now, I think, on the question of international problems. I have before me here, and I am not going to burden you with it, a list of the members of the Berne Convention and the protocols and the Rome Convention, to which the United States adheres and all the south and central American republics.

Q. There is nothing in that Convention that provides that the owner of the copyright may refuse or refrain from selling to another applicant, and paragraphs 1 and 2 or section 14 provides for the right by licence to any complainant to publish and print and distribute if you fail to do so, provided he does it by licence or notice?—A. Yes; but Colonel Vien, I must repeat the difficulty that arises, and I am forced to repeat what I asked Mr. Stevens. The right is part of the section. Any person may apply to the minister for a licence to print and publish in Canada any book wherein copyright subsists if at any time after publication—

By Mr. Thorson:

Q. That is the question.—A. These rights arise only when there has been publication. So my friend Mr. Cahan is perfectly right when he says the question at issue is to determine what is the meaning of publication.

Q. What constitutes publication?—A. I say this committee is in a difficult position to determine the meaning of publication, because in every part of the Rome and Berne Conventions we find sanctified unpublished work as being subject matter of copyright until it is published, and giving the author or owner of copyright the sole right to decide to publish it.

By Mr. Vien:

Q. Is there anything to prevent the Canadian parliament passing legislation to define publication?—A. Yes, there is.

By Mr. Thorson:

Q. Wait a minute. Is the question of publication before the Supreme Court?

Hon. Mr. RINFRET: With regard to section 14, the section covering licences, I may say that that is a special disposition of the Canadian law. It does not exist in copyright acts in other countries. It applies only to the domestic market. I want to make that plain. At the time it was passed it was greatly objected to by these composers and copyright people in a general way. I may say that we have left it there, but I still have my doubts as to whether it should be there at all. It does not exist in legislation in other countries, and it does not apply to copyrights in other countries at all.

[Mr. J. A. Mann.]

By Mr. Thorson:

Q. The question of whether your organization is publishing these plans within the meaning of the Copyright Act is before the Supreme Court, is it not?—A. No, sir. What they said was, you did not publish them, you refused to publish them, you did not publish them.

Q. Is the question as to whether your organization is the owner of unpublished plans one of the questions before the Supreme Court?—A. Yes, that is one of the questions.

Q. So that the question as to whether you have published the plans or not is before the Supreme Court in that way?—A. Undoubtedly.

Q. Then, may I also ask, in respect of each of your plans, how widely have you distributed amongst the members of your organization and amongst agents and brokers individual copies of plans?—A. How widely, sir?

Q. Yes. That would depend, I suppose, upon the community in respect of which you made a plan. Let us, for example, take a plan of a portion of the city of Toronto. How widely does that individual plan become circulated?—A. In conformity with the insurance activity in that district. If I could give you an example it may help you. Let us take Noranda. The original plan was made by ourselves and no more related to Goad than I am—

Q. How many people would get that plan?—A. Certain members of the Association decided they would contribute to the cost of printing the plan of Noranda. There were sixty copies printed and twenty-two distributed.

The CHAIRMAN: It is 1 o'clock.

The WITNESS: There were seven to agents and fifteen to companies.

By Mr. Thorson:

Q. So that the circulation of individual plans is very limited?—A. Quite limited, because you see the agent in British Columbia is not a member and it does not apply to Manitoba or Montreal or the eastern provinces.

Q. When you speak of the circulation of these plans to thousands and thousands of people you are speaking of the circulation of a large number of individual plans?—A. Altogether, undoubtedly.

Q. But each individual plan is circulated only in a very limited manner?—A. In so far as the insurance activity of that district requires, and nothing further.

The committee adjourned to meet Wednesday, June 15th, at 11 o'clock.

APPENDIX

REASONS AGAINST THE ADOPTION OF BILL 124 AN ACT TO AMEND THE COPYRIGHT ACT GIVEN BEFORE THE HOUSE OF COMMONS COMMITTEE ON COMMERCE AND BANKING BY THE CANADIAN AUTHORS' ASSOCIATION

The Canadian Authors' Association feels that, not only are the provisions of Bill 124 strongly detrimental to its members, but also that a general Act such as the Copyright Act should not be used as the medium in which the private dispute of opposed commercial groups should be settled.

We understand that the sponsors of the Bill, Underwriters who are not members of the Canadian Underwriters Association have introduced it in order to gain freer access to certain plans, maps and fire risk schedules and tariffs, belonging to members of the Association.

Members of this Committee will readily understand that while the author's property rights in his works are based on similar principles to those which govern all property, his power to enjoy any profit from his "copyrightable" property depend for effect, not on general property rights, but on this very Copyright Act which it is sought to amend.

It does not take a specific Act to enable a householder to enjoy the profits from his house, but the Copyright Act had to be passed by Parliament for the specific purpose, before the Canadian author could safely make a profit from his work.

Hence our objection to this amendment which, however it may be worded, is designed to gain an end which has nothing to do with the purpose for which the Copyright Act was originally passed.

The sponsors of the Bill, we know very well, have no wish to injure us in any way, but even if the Bill is amended, it is illogical and a dangerous precedent to try and torture the English language into excluding every possible variety of copyrightable material *except* those specific maps and plans which are really in question.

We feel that a separate Bill for the one specific purpose would be the straightforward of obtaining the points desired by the sponsors, and the only way which could not *possibly*, under *any* circumstances affect authors, composers, artists and those others for whose protection the Copyright Act was primarily intended.

* * * * *

The Bill as at present printed severely prejudices Canadian authors in several ways which we here state very briefly:

Subsection (14) of the Amendment extends the scope of the Compulsory Licensing clause of the Copyright Act to include *unpublished* works as well as published—a drastic, far-reaching extension when viewed in the light of an author's manuscripts. Even if the wording of the Bill is changed to some such form as "otherwise prepared, distributed or issued for commercial purposes," instead of "unpublished," those words are still perfectly applicable to certain classes of purely creative writing,—material prepared for syndication, for example.

This subsection makes a further great extension of the Compulsory Licensing clause (14) of the Copyright Act when it uses the words ". . . . allege. . . . that there has been an abuse of the rights. . . ."

"An abuse" can only mean "any abuse," but in the original Act the abuse which the Minister is empowered to remedy by compulsory licence is strictly

limited to cases where the owner of the copyright fails (a) to print the books in Canada, or (b) to supply the Canadian market with the books so printed in Canada.

Bill 124 therefore throws the gates wide open to compulsory licensing, the only restriction being that the owner of the copyright be a Canadian citizen. It departs entirely from the original purpose of the clause, which, as is made clear in many places, was to serve the interests of Canadian printers and publishers against their competitors outside Canada.

Subsection (15) of the Bill emphasizes the great scope of the extension and the departure from the original purpose. Like the other two subsections of this Bill it is taken—largely verbatim—from the Patent Act, which was designed to meet quite a different class of problem.

Subsection (16) deserves your very special attention. The mere number attached to it—"16" is significant. This amending Bill adds three subsections to Section 14 of the Copyright Act. They start with "14" and end with "16." Why? Because Section 14 of the present Act already has thirteen subsections—*and each one of them is a definition or regulation or restriction of the Minister's powers under the compulsory licensing clause, all of which are removed by Bill 124.*

This fact seems clear from the wording of the Bill which starts "Notwithstanding the provisions of the preceding subsections..." and ends "...may order and grant such relief as he may deem just and fair in the circumstances."

We feel that if we must be subject to a compulsory licensing clause, its scope and working should be defined as fully as possible and the necessary protective regulations clearly stated in the Act of Parliament itself.

On an attached Appendix sheet we have listed the purport of each of the present protective regulations which this Bill would remove. They are enlightening to those with some understanding of an author's problems.

We respectfully submit that so many drastic changes in an Act on which an author's livelihood depends, should not be made in this manner—as the by-product of a dispute between two groups of Underwriters.

APPENDIX

SHOWING THE PURPORT OF THE THIRTEEN SUBSECTIONS OF SECTION 14 OF THE COPYRIGHT ACT, WHICH REGULATE THE COMPULSORY LICENSING OF AN AUTHOR'S WORK, AND WHICH WILL DISAPPEAR IF BILL 124 IS ADOPTED.

Subsection 1. Provides that the work must be unpublished, that the owner must have failed to print it in Canada and to supply reasonable Canadian demands.

Subsection 2. Applicant for licence must state proposed price.

Subsection 3. Applicant must deposit certain monies with application.

Subsection 4. Notice of application must be given to the owner of the work it is proposed to licence.

Subsection 5. Owner may then undertake Canadian publication himself and thus prevent any licence at all being granted.

Subsection 6. If more than one person applies for a licence to publish the same work, it must be granted to the one offering the most favourable terms to the owner of the copyright.

Subsection 7. The time for which the licence may be granted is limited.

Subsection 8. Licensee must pay royalties.

Subsection 9. (a) Licensee must print at least 1,000 copies—and within two months of granting of licence.

(b) Licensee may not alter in any way whatever, or condense or add to the authorized edition of the work concerned.

Subsection 10. Regulates method of imprinting the book.

Subsection 11. The Minister must withdraw the licence if licensee does not fulfil its provisions.

Subsection 12. If the owner of the copyright suppresses a licensed book the licensee may not print more of them, and owner is entitled to buy any copies already printed, but not sold, at cost price.

Subsection 13. No licence may be granted against the owner's will, if any edition has ever been published in Canada.

All of the above clauses protecting the author when his work is compulsorily licensed, will be removed if Bill 124 is adopted.

Mr. Doc
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Canada, Banking and Commerce
Standing Committee, 1938

SESSION 1938

HOUSE OF COMMONS

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STANDING COMMITTEE

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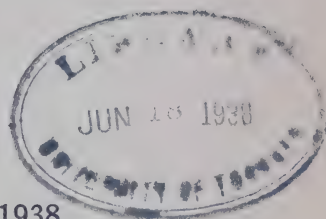
BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 3



WEDNESDAY, JUNE 15, 1938

WITNESSES:

Mr. D. K. MacTavish, K.C., Ottawa;
Mr. W. B. Scott, K.C., Montreal;
Mr. F. P. Lloyd, Toronto;
Mr. E. R. F. Long, Toronto.

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1938

MINUTES OF PROCEEDINGS

WEDNESDAY, June 15, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Cahan, Clark (York-Sunbury), Coldwell, Donnelly, Fontaine, Hill, Jaques, Kinley, Kirk, Landeryou, MacDonald (Brantford City), McGeer, Mallette, Martin, Maybank, Moore, Raymond, Stevens, Thorson, Ward.

In attendance: Hon. Fernand Rinfret, Secretary of State, Mr. G. D. Finlayson, Superintendent of Insurance, Mr. W. B. Scott, K.C., Montreal, Mr. Cuthbert Scott, Ottawa, Mr. D. K. MacTavish, K.C., Ottawa.

Hon. Mr. Rinfret addressed the Committee.

Mr. D. K. MacTavish, on behalf of Mr. J. A. Mann, K.C., made a brief statement after which, on motion of Mr. Stevens, it was resolved that witnesses in attendance be heard, and that following the conclusion of their evidence, the Committee proceed to the consideration of the subject-matter referred to the Committee by the House.

Mr. F. P. Lloyd was called and examined.

Witness retired.

Mr. E. R. F. Long was called and examined.

Witness retired.

Mr. W. B. Scott, K.C., was recalled and further examined.

Witness retired.

On motion of Mr. Thorson,—

Resolved—That the Committee adjourn to the call of the Chair its consideration of the subject matter of Bill No. 26, in order to give members of the Committee an opportunity to study the evidence, and that the Under Secretary of State and the Commissioner of Patents be invited to attend the next sitting.

The Committee then proceeded to the consideration of Bill No. 120, An Act to incorporate The Workers' Benevolent Society of Canada.

B. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

The Standing Committee on Banking and Commerce met at 11 o'clock, Mr. W. H. Moore, the chairman presided.

The CHAIRMAN: Order, gentlemen. I am told that Mr. Mann will not be here to-day; he has been called away. As you will recall, he was finishing his statement when the committee adjourned yesterday. Mr. MacTavish is taking his place. Have you anything further to say, Mr. MacTavish?

Mr. MACTAVISH: We have nothing further to add, Mr. Chairman, unless my friend Mr. Bolton wishes to say something. However, Mr. Chairman, with the permission of the committee we have two witnesses we would like to call, both of whom would be quite brief, on the general question of the plans.

Mr. MARTIN: Mr. Chairman, I have not any desire to be unfair to Mr. MacTavish and the group he represents, but it seems to me that we have unnecessarily gone into a great deal of detail about matters that really do not concern the principle of the bill or the principle of the subject matter referred to this committee; and while the additional information that Mr. MacTavish has in mind might be of great concern to the issue as between these two groups of companies, I do not see how that can help the issue. We have spent two meetings on this question; and I think what we should do this morning is amongst ourselves to discuss the question as to whether or not it is desirable to amend the Copyright Act so as to give to the Commissioner of Patents power to deal with abuses in respect of any copyright. I think that is the issue if we go into this matter further. This matter is a dispute between two groups. It is quite possible that others who might have a conflicting interest might want to air a grievance before this committee. In any event, I think those grievances are properly referable now to the minister and under the proposed amendment to the Act, to the Commissioner of Patents.

Hon. Mr. STEVENS: Mr. Chairman, I agree with what Mr. Martin has said. He did not agree with me when I said the same thing two meetings ago. I quite agree that this dispute between two groups never should have been brought before a committee at all, but it having been brought here and we having heard as much as we have, I think that out of courtesy we must allow them to complete their statements. I assume that Mr. Scott would like to say something further, and it seems to me that having committed ourselves to that principle—if I might say with deference to you Mr. Chairman, over my protest two meetings ago—the only thing we can do is complete the hearing. I suggest that if the committee agrees to hear these people that those who are to be heard should cut their remarks short and keep them as close as possible to the matter before us.

The CHAIRMAN: Do I understand, Mr. Martin, that you want to have no more evidence, and it is your desire not to hear witnesses suggested by Mr. MacTavish or to allow Mr. Scott to speak in rebuttal to what Mr. Mann may have said?

Mr. MARTIN: What I am saying may not please Mr. Scott who, I believe, did want to make replies, but my view is that if we brought this matter to a close and forgot this particular issue more would be gained—if we were not hearing any more witnesses.

Mr. THORSON: Mr. Chairman, there is something in what Mr. Martin says, in that we should be careful to deal with this matter in a general way from

the viewpoint of the principles involved. On the other hand, we can get, through hearing both sides of this dispute, a very clear idea of the principles that are involved and an exposition of those principles from both sides. I would, therefore, think that Mr. Stevens has expressed the proper view, that since we have embarked upon the enquiry into this particular controversy we should conclude it as fully as possible and give both sides every possible opportunity of placing before this committee their respective sides of this controversy; because if we have both sides fully before us then we can clearly see the principles that are involved. I would be of the view that we should not in this committee attempt to settle the controversy between these parties one way or the other, but that we should refer the whole subject matter back to the Department of the Secretary of State for the purpose of considering the principles that are involved and drawing the proper amendments, if any are required, to the Copyright Act. Those amendments are of such a nature and the subject is of such intricacy that we in this committee, with deference to all of our members, could not, I think, do the job that should be done. We might indicate our views in a general way as to the principles that should be followed, and then submit our views in a general way back to the Department of the Secretary of State so that the necessary amendments, if any are to be made, may be made carefully, judicially, and submitted to various law officers in various departments who are familiar with the subject so that all angles of the question may be dealt with. Mr. Cahan made it perfectly clear, I think, to all of us that we must be very careful to see all the implications that are involved in an amendment to an Act which, after all, is a public Act; and there is great danger in drafting upon a public Act an amendment which is designed to settle an individual and particular controversy. I would think we ought to hear all the witnesses on both sides of this controversy so we may have every aspect of the question.

Mr. MARTIN: Mr. Chairman, I want to make one observation in reply to Mr. Thorson. I quite agree with the course he has suggested, that the matter, so far as drafting a bill is concerned, should be left to the Department of the Secretary of State. I do think, however, that this committee should not conclude its sittings in respect to this matter without declaring itself on the principle involved. The details, having in mind all the difficulties which Mr. Thorson and Mr. Cahan pointed out yesterday, can be borne in mind by the department.

Now, with regard to further evidence, I suggest this, that if we are going to have evidence then we have got to go to the bottom of this whole problem as between these two groups. To hear further evidence is not going to help us in respect to this general principle. This whole matter I suggest now is one for the minister at the moment, and under the proposed amendment, the commissioner of patents. We cannot really benefit greatly from further evidence. Mr. Mann has stated his point of view, Mr. Scott has stated the other opposite point of view, and I think it is a matter of detail.

Mr. KINLEY: And the matter is before the courts.

Mr. MARTIN: Yes. The important point is the one Mr. Thorson has made: A reference to the department for drafting a bill embodying what I think this committee should declare to be its opinion on the general principle; and after you have disposed of the matter of further witnesses, Mr. Chairman, perhaps there will be an opportunity for saying something.

Mr. KINLEY: What is the general principle you want?

Mr. MARTIN: The principle is this: there should be provided machinery by an amendment to the Copyright Act giving to the commissioner of patents power to determine whether or not in his judgment in respect of any copyright there exists an abuse prejudicial to the general interest and that from such decision there shall lie an appeal to the exchequer court. That is the principle involved.

Mr. KINLEY: What about the publications?

Mr. MARTIN: That is a matter for draughtsmanship which, as Mr. Cahan pointed out, is very important—the improper definition or interpretation by the courts of the word “publication.” You have asked me for a general statement of the principle.

Mr. KINLEY: There is the matter of publication.

Mr. MARTIN: I am referring to the principle of the bill. I am frank enough to state that before this bill was introduced I had not thought of any particular abuse other than this particular one, but Mr. Cahan clearly indicated yesterday that there may be all sorts of abuses apart from this particular difference between these two influences—the non-tariff and the tariff groups. There is a principle involved, and I think this committee should declare itself on that principle. Are we of opinion that where, in respect of any copyright, there is an abuse that abuse shall be corrected? And if we are of that opinion shall we empower the commissioner of patents to deal with or determine there is an abuse and by that decision to stop the abuse? And having done that, shall we allow an appeal from his decision? That is the general principle. Mr. Stevens stated it at our first meeting and I subscribed to it then and I do now.

Mr. MAYBANK: Mr. Chairman, as well as I could follow Mr. Thorson I feel that my views very well coincide with his own. I am asked as one member of a committee at this moment to take some action, but what have I before me? I have a statement of desires of two interested witnesses, I have a statement of fact made by two witnesses. Each of those witnesses was doing his job in a perfectly honest and straightforward way, and nevertheless, even within the complete bounds of veracity, emphasis may be placed by a witness here, there or elsewhere because of the reactions, shall we say, that come from his heart. My friend suggests his pocket. I fancy the heart may be influenced by the pocket first. I am not casting any aspersions on anybody; I am only pointing out that what we have before us is evidence from two interested parties.

We are not likely to get the broadest possible survey by that type of evidence, and I would hesitate a great deal to pass upon any subject with such information available, especially if it were possible to obtain more information.

Mr. MARTIN: I have no objection to that.

Mr. MAYBANK: I am not asking for more evidence exactly, but I am thinking out loud about this sort of thing.

Now, then, I fancy it is inconceivable that we would pass a law which would say specifically, “These books which one crowd have must be available at a certain price for the other crowd.” It is not likely—

Mr. MARTIN: Nobody is asking that.

Mr. THORSON: It is not possible.

Mr. MAYBANK: My friends on my right, I fancy, are misconstruing my remarks; I am not suggesting that any person has asked that.

Mr. MARTIN: Oh, I see.

Mr. MAYBANK: My observation was a rhetorical one by way of illustration to another point. Perhaps I speak too slowly and thereby almost invite interruption. I am not taking umbrage at the interruption. I say it is inconceivable that a law of that sort drafted specifically, be recommended by this committee and passed by parliament; however, the very moment you get away from that degree of specificity you apparently touch on some other section of the public.

Mr. Cahan pointed out with very great clearness—I wish we had his words before us this morning, but they have not come up yet, and I do not remember his case well enough to quote it—but we did all get the general impression that the moment you touch this Act in any respect you affect all manner of other interests. He suggested there were men in the department—

and he spoke as one having knowledge from experience—he suggested there were men in the department who were particularly well experienced in ability to discuss this matter—men who had a great deal of knowledge—who had a great deal of experience with some of these points. I do not know, but I think he was suggesting that what we ought to get first would be rather a comprehensive survey from them as to all of the possible issues involved. At any rate, if he did not suggest that, I would say this, that realizing that anything that I do with reference to this Act may result in all that general type of disturbance that is indicated, then before I do anything at all I want to bring these men here, and so far as my poor intelligence would lead me I would ask them all manner of questions on this matter. I would think we ought to have every person in the government service and every other person who can be found who can deal with these particular possible disturbances.

It does not seem to me that we will go forward as well as we should by at this time going in for such a large enquiry—bringing in all of the witnesses that it would seem to be necessary—but rather we should delegate to the department and to those experts I have spoken of for the time being, at any rate, an examination into this matter, and a very complete report back. With all deference to Mr. Martin, I think we cannot pass upon the principle involved. I do not think we can pass upon a question of principle without seeing the implications of the application of the principle, and that is the very thing with which I am dealing. We must be clear on all the implications before we can pass on the principle.

It is not quite like they sometimes say about lawyers. I could not help but think of this when Mr. Mann was giving evidence and Mr. Cahan asked him a question. I think one other member and I were agreed that he was hedging. They say that sometimes lawyers will not agree that two and two make four unless they find out what use is going to be made of the admission. The position is not quite like that because here we know that there are many implications, or we have good reasons to fear many implications. Therefore, I do not think we ought to be asked to pass upon any principle until we can see all the implications of the application of that principle.

There is a further point. In spite of the fact that the subject matter of this bill has been referred to this committee, it does seem to me that it would be in the best interests of all if the enquiry did not proceed until we found out what the Supreme Court decides. Here we are mixing ourselves up into a war between these two litigants—

Mr. MARTIN: No.

Mr. MAYBANK: Just a moment. After all, this is only an expression of opinion on my part, and gentlemen have a perfect right to disagree with me; but we are mixing up in a war between two litigants at the moment. I am justified, I think, in drawing that inference, owing to the fact that the only people we have had before us are two litigants who are presenting their case to us. It seems to me that is the position in which we are placed, and the man on this side of the fence at this moment, about the time we make our report or shortly after, may be over on the other side of the fence. The supreme court may give a complete reversal of the judgment so far rendered.

Let us suppose, for instance, the non-board companies won their case before the appeal court, and they apparently are not withdrawing their case; let us suppose that they won their case, obviously they would not desire this bill any longer and all our labour would go for nought. I think, therefore, it would be better if the departmental experts were to deal with this matter rather than that we should deal with it, because they would probably make a report after the time the supreme court had dealt with it.

In addition to all of the other items to which I have referred in the nature of additional evidence, and so forth, we have this: Mr. Martin a few moments ago said that the principle is whether or not under certain circumstances an

abuse should be corrected. But, sir, we have got to get down to the proposition of deciding whether, granted everything that Mr. Scott says is correct, that does constitute an abuse.

Mr. MARTIN: I am not asking that the committee should determine whether or not this claim of Mr. Scott's is to be substantiated; I am simply saying let us provide the machinery whereby there will be an opportunity of determining that.

Mr. MAYBANK: Yes, I appreciated that. But I do think that we are in the position of creating machinery for the correction of an abuse, and, at the same time, deciding that we shall confer upon some officer the right to determine whether there is an abuse.

Mr. MARTIN: That is right, with an appeal.

Mr. MAYBANK: All right, then there is another principle involved, whether we shall give this judicial function to some bureaucrat who may be in the employ of the government to-day. There is an additional principle involved; and I would like to know a great deal about the abuse, if there is one, before I would decide that it is desirable to give any such power to a man in the employ of the government of the Dominion of Canada.

Mr. MARTIN: May I say that this provision already exists in the Patent Act.

Mr. MAYBANK: Yes, I know it does, and there appeared in the past to have been good reasons why it did not appear in the Copyright Act. It appears in the Patent Act, and I presume that point has been considered in the past, and I suppose we would have to consider it all over again.

That is my general position with relation to this. I understood Mr. Thorson was making a motion that it be referred to the department.

Mr. THORSON: No, no.

Mr. MAYBANK: I would like to make that suggestion, at any rate, and if it finds any favour at all I would either make it as a motion or—

Mr. THORSON: Mr. Chairman, the question before us is whether we should hear any witnesses.

Mr. MAYBANK: I think we ought to decide that before deciding on the question of the witnesses. I think it would be better to have an enquiry of that sort made rather than to bring in more witnesses now and then pass it over.

The CHAIRMAN: Mr. Maybank and gentlemen, I suggest that at this stage we have a statement from the minister.

Hon. Mr. RINFRET: In the first place, Mr. Chairman, I point out that the minister is the one who referred this matter to the committee. If I had felt at that time that the government should take a definite stand in the matter naturally I would have said so when the bill was up for second reading. I thought it might be better to do that in view of the fact that there was little time left twice a week to deal with this matter as a public bill, but from a private member, and that there would be ample opportunity here to discuss the matter, hear evidence or expressions of opinion on the subject.

I was made aware that a motion would be put this morning to the effect that it should be referred back to the Secretary of State. I did not greatly object to that at first, but having heard what I have just heard now—I have an open mind on the matter—I would think it might be better if the committee would give a little more consideration to it before referring it back to me, because that is where it came from, and unless the committee were convinced as to the principle of the bill, which would represent some progress. If the committee merely reports the whole matter to me without an expression of opinion, we will not have made any headway.

I may say, though, that there is much in what Mr. Martin said, that this committee should not consider itself as being a judicial body to pass upon the case of the two insurance groups.

Mr. THORSON: Certainly not.

Hon. Mr. RINFRET: I think it is quite plain, as Mr. Cahan said yesterday, that if we put through the bill it will do nothing in the way of settling that case. You might adopt the bill as it has been presented, but the Commissioner of Patents might decide that it should not be used in the case of the insurance people. Therefore, I believe the evidence given by the lawyers interested in that case can only serve as an example to point out what kind of an abuse might exist. But it is not material for any of you gentlemen to be fully aware as to whether Mr. Mann or Mr. Scott is right. That can only serve as an illustration of what might take place, and as Mr. Cahan has pointed out in his very valuable evidence, there might be other cases arise where the department would want to act.

I think we are agreed one point, namely, that there is no machinery at the present time in the Copyright Act to permit an action in the case of an alleged abuse. There might be, for instance, some medical books, or books of science, which were the property of one group, and we may think that they should be made available to the public generally; but there is nothing at present in the Copyright Act to force that.

I do not want to be driven away from my main argument, namely, that I would ask this committee not to dismiss the subject matter of the bill before giving us some indication at least of what they think of it. It has been referred to the committee for that purpose. As to evidence on the insurance case, perhaps we might reach a compromise and say that we might as well reach some conclusion in regard to it because it has been started, and to have a full statement printed in the committee's report. At the same time, it might not be improper to point out to these gentlemen that the committee is not to pass on that case.

Mr. MARTIN: Hear, hear.

Hon. Mr. RINFRET: Therefore, that their statements should be made briefer because they will only serve as an illustration to guide us in adopting a general principle.

I may point out that although there is a coincidence in the fact that the bill has been presented at the moment this case is being argued, at least one phase of the case before the supreme court, it is true that the case submitted to the exchequer court dealt with the infringement of copyright and is not altogether similar, or is not the one that we are now considering. But in the course of the suit and, in the judgment of Mr. Justice McLean, I could point to many declarations which certainly could help us in our present work, and I expect that when the supreme court finally passes on the bill which it cannot do before this fall, we may there also find material that would help the department in reaching a decision.

I may say that even though the bill were passed now, the department would very much hesitate to take any action in the insurance case until the supreme court had rendered judgment.

Mr. MARTIN: Quite.

Hon. Mr. RINFRET: I do not want to argue that point, that the point submitted to the court is not the one that is before us; but in the course of the arguments many things happened that bring them together. I may point out, for instance, that in the matter of publication Mr. Justice McLean in his judgment indicated that in his own opinion the alterations to the original Goad plans had not been published in the terms of the Act.

I do not think it is necessary to read that judgment, I just give that as an example.

Therefore, Mr. Chairman, I would suggest two things. I have been very remiss in offering opinions, because I referred the bill to the committee in order to become enlightened on it. I think that inasmuch as you have entered into evidence about the insurance matter, it should be concluded; but I would suggest

to the interested parties that they could make their statements shorter inasmuch as this is not the point on which we are going to pronounce ourselves, and, in the second place, I would ask you, Mr. Chairman, to see that this bill is not sent back to me unless it is accompanied by a certain amount of instructions or expressions of opinion from the committee. If after looking into it further the committee does not wish to pronounce itself, it may say so. I am not in favour of the immediate reference of the matter to the Secretary of State's department before further work has been put on it by the committee, which may be helpful to us when we have to consider the matter fully.

Hon. Mr. STEVENS: Mr. Chairman, I would like to move that we hear the witnesses suggested, with the understanding that they should be as brief as possible and to the point; and that following the conclusions of the evidence the committee proceed to consider the order of reference and to study the subject before the committee.

Mr. THORSON: Hear, hear.

The CHAIRMAN: Carried.

Mr. MAYBANK: If I was reported as making a motion, I am agreeable to withdrawing it.

The CHAIRMAN: What witness do you wish to call, Mr. McTavish.

Mr. McTAVISH: Mr. Lloyd.

F. P. LLÖYD, called.

By the Chairman:

Q. Mr. Lloyd, will you state your position?—A. I have been engaged in the map business since 1901. From 1901 to 1905 I was with the Charles E. Goad company.

Q. As a publisher of maps?—A. No, I was doing both the outside work on insurance plans, and the inside work. I am thoroughly conversant with every part of the business as far as fire insurance plans are concerned.

I left them in 1905 and in 1908 I commenced doing business in an organized way. I was thoroughly conversant with every end of the insurance plan business.

In 1915 my father and brother, who were with the Goad company, came in with me; they left the Goad company and came in with me, and in 1915 we did quite a bit of work for the Western Canada Fire Underwriters' Association.

In 1916 we made a couple of insurance plans which I have here, for Milton, Ontario, and also a series of maps of mining camps in northern Ontario, which I also have here.

The CHAIRMAN: Mr. McTavish, just what do you desire to prove?

Mr. McTAVISH: The point is, Mr. Chairman, that we are showing that maps were available during this period about which there was some discussion.

Mr. THORSON: Can we not accept that, that they were available?

Mr. McTAVISH: If that is acceptable, all right.

The CHAIRMAN: The committee accepts that as a fact? Is that correct?

Mr. MARTIN: No. The committee, surely, does not express an opinion. I think the furthest we can go is that that has already been stated pretty clearly to the committee.

Mr. SCOTT: Mr. Chairman, I want to say that that is distinctly not admitted by us.

Mr. THORSON: Mr. Scott, we are not concerned with any question of facts in this case at all.

Mr. MARTIN: That is right.

Mr. THORSON: We simply want to get an illustration of the different sides of the controversy, and we do not care a button whether the facts are

one way or the other. It is an illustration of the two sides of this controversy that we would like to get so that we will be in a position to make a general statement of the principle that might be carried into effect by proper draftsmanship in making amendments to the Act.

The CHAIRMAN: We have just decided that we want to have some brief evidence, and it seems to me that we ought to know from Mr. McTavish just what he proposes to prove to the committee by the witnesses.

Mr. THORSON: Yes.

The CHAIRMAN: It may be unnecessary to repeat what has already been said. My suggestion is simply to shorten the evidence as much as possible.

Mr. THORSON: Mr. McTavish might tell us what he proposes to prove.

Mr. McTAVISH: Mr. Chairman, this witness will prove that at the times he mentions, map makers were available to do the work that we did and were available to the clients of my friend, Mr. Scott.

Mr. MARTIN: That is not necessary.

The CHAIRMAN: That is not necessary. Next witness.

Mr. McTAVISH: The next witness, who can be equally short, will prove that there are plan makers to-day in the business who will be or could be put out of business by virtue of the passage of legislation that is before this committee at the present time.

Mr. MARTIN: That has already been alleged.

Hon. Mr. STEVENS: Who is he? Let us hear him.

Mr. McTAVISH: Mr. Long.

E. R. F. LONG, called.

Q. Mr. Long, will you state your position?—A. I am an independent fire insurance surveyor.

Q. An independent fire insurance surveyor?—A. For the last two years I have been making fire insurance surveys for fire insurance companies in Ontario.

Q. Board companies or non-board companies?—A. For both. I have been making plans for both, both for the non-board and board companies. I have here surveys made by myself and also by the Provincial Insurance Surveys; and at the present time I am actively engaged in the making of fire insurance plans.

Mr. MAYBANK: Mr. Chairman, I should think that evidence of this type would probably be more appropriate if and when there were an actual bill being considered.

Mr. MARTIN: Do you not think, Mr. Chairman,—I say this with great respect to Mr. Maybank—that this evidence may be very important for the Commissioner of Patents in determining whether or not there is an abuse?

The CHAIRMAN: Quite right.

Mr. MARTIN: Not before this committee.

The WITNESS: I think the mere fact that I came here this morning—

By Hon. Mr. Rinfret:

Q. Do you consider these maps are as good as the Goad maps?—A. I will not only say so, but the companies have expressed their opinions that way, and they have bought them.

Q. They do not insist on getting Goad maps?—A. The Goad maps today, a certain amount of them, are very much out of date, and they buy our maps because our maps are right up to date.

[Mr. E. R. F. Long.]

Q. That is the point. Your maps being better than Goad's, why should any insurance company want to amend the Act to be put in a position to buy Goad maps? Perhaps my question is in the form of an argument and I should not press it.

The WITNESS: There is one thing, too, that could have been done in the past; the companies that are now holding Goad's plans or maps could have revised them themselves. In fact, some of them have revised Goad's maps, that is, those who are in possession of Goad's maps of 1915 and 1916. I have seen revisions put in by hand.

Q. But your maps are available to the whole public?—A. Absolutely.

By the Chairman:

Q. The minister used the words "Goad maps"; are your maps as up to date and as good as the Underwriters' maps for the same towns?—A. Yes, sir.

By Mr. Martin:

Q. You have maps for every town in Canada?—A. No, not at the present time. We have only been making maps in the province of Ontario.

By the Chairman:

Q. Are you prepared to make surveys of towns on request?—A. Oh, yes; only too glad to do so.

Q. That is your business?—A. That is our business.

Q. Tell us something about your charges. What are your charges?—A. For a village map, running, we will say, 4 sheets, our charges range from \$8 to \$10 a sheet. I have here a list of charges by the Provincial Insurance Surveys, and for my own maps. They run approximately \$8 to \$10 a sheet.

Q. Give us an illustration of a town, some town. Do you know the celebrated town of Whitby?

Hon. Mr. STEVENS: Say Oshawa.

Mr. MARTIN: Where is Whitby, Mr. Chairman?

The CHAIRMAN: I thought everybody knew it.

Mr. THORSON: A suburb of Oshawa.

The WITNESS: The plan of Belleville, consisting of twenty-three sheets—that is, including the key of 500 feet, sold for \$252; the approximate cost per sheet was \$10.90. Of course, you have got into the city category where the sheets are heavy. But getting into the villages—take the village, we will say, of Uxbridge; there are three sheets—\$30. Of course, that is the \$10 a sheet plan. There are some of the smaller places where they are not very well built up, and they do not cost so much.

By the Chairman:

Q. That is per purchaser, or is that outside? Is that the purchaser who wants a map of Uxbridge?—A. Our prices are the same to the public.

Q. He has to pay—what was it—\$10?—A. About \$10.

Q. And Uxbridge has about 1,400 inhabitants?

By Hon. Mr. Stevens:

Q. Mr. Long, would you undertake, for instance, a survey of a city like Hamilton or Winnipeg or Vancouver without having some guarantee of cost from some group?—A. No. In cases like that I would have to go to the insurance companies and get them to agree that they would take the plans, so many subscriptions, before anything was done.

Q. You would have a contract?—A. A contract.

Q. For a certain limited number; and then afterwards it would be open to the public to purchase?—A. I am working at the present time on a contract I

have with the Canadian Underwriters Association on unprotected areas. I am making a survey at the present time on a contract basis. I first go to the village or town and find out how many sheets are to be done, how much area is to be covered. I figure out the cost and go to the companies and get their sanction, their orders or subscriptions.

By Mr. Maybank:

Q. A sort of advance sale proposition?—A. That is it.

The CHAIRMAN: Mr. Scott, how many non-board companies are there?

Mr. SCOTT: 71.

By the Chairman:

Q. Would an order from 71 companies satisfy your requirements for a special survey?—A. I would say yes, sir, if you can get it. But there are a lot of non-board companies that are not buying plans from individuals such as myself, because they are making their own. The Federal Hardware and Implement Underwriters have their own staff of surveyors. They have to revise their plans. They claim their engineers make their own surveys, just as they have in manufacturing risks—sprinklers and so on; they have their own survey in framing the rates as well.

By Hon. Mr. Stevens:

Q. Their requirements are a limited survey?—A. A limited survey.

Q. Limited to the industry?—A. To the particular risk.

By Hon. Mr. Rinfret:

Q. May I ask you a question—have you ever used original Goad's plans in your work?—A. No. Our work is original.

Q. They are available. There is nothing that could prevent you from taking the original Goad's plans and making alterations to make them up-to-date.—A. Well, I do not know about that, because I have never done that.

Q. But you can do it in another way; you could produce, for instance, for a group of insurance companies, if they were numerous enough, at a reasonable price, insurance maps that would be perfect for their requirements for their work?—A. Yes. Take for instance the case of the Goad's maps—I could use the skeleton of the Goad's maps and block in the areas.

Q. That is what I had in mind.—A. Yes. I could fill in the necessary details. I could still use their skeleton. The surveys can be made fairly reasonably if you can make use of a basis map. The way I do, I apply to the town engineer of these municipalities for a skeleton map, and we build up our information on that, after securing the skeleton map of the general frontages of the mercantile buildings. After that, it is filled in; that is all original work.

Q. This is very interesting evidence. I just want to put one further question. I am not sure whether you can reply yourself. If you are in a position to produce insurance maps just as well as the Underwriters, why should the non-board companies insist on buying Underwriters maps?—A. It is a rather difficult question to answer.

Q. Perhaps some other witness can answer it.—A. May I make one statement, and I am not overstepping the mark. It is very difficult for any surveyor or any organization in the map business to get a definite program from the non-board companies. We have tried to have meetings whereby we could have all sat in together and discussed the advisability of forming a stock company for the purpose of making these plans. I am going back to two years ago when Mr. Allgate, my associate, went to Kitchener. I believe the meeting at that time was at Stratford of five companies known as the Waterloo and Kitchener group. He sat in there and he tried to sell them the idea of supporting this organization

[Mr. E. R. F. Long.]

for the making of insurance plans, and the result was that they could not agree. At the present time they said, No, there was to be no money to be put up, there was to be no advance made for the manufacture of these plans. I, personally, called on at least twenty companies and only found two who were willing to go in on the idea as a stock proposition whereby they would advance a certain amount of this money; because it must be understood that in making a survey of towns like Hamilton, Montreal or Toronto, it would take an awful lot of capital to do a thing like that, and at the present time the largest towns that have been surveyed by independent people like ourselves are Belleville or Oshawa.

Q. But if the non-board companies would get together, they could have plans prepared at reasonable cost that would be just as good as the Underwriter?—A. Absolutely; and I will admit that they could be produced a lot cheaper than we are producing them now, because it would be their own organization. They have gone out and made maps for themselves. I have seen maps made by the non-board people themselves. They are not big maps such as cities, but small towns. I will give you an instance—Williamsburg, for instance. That consisted of two 50-sheet plans. They made their own survey. At the time it was rough in its design, was sketchy, but it answered their purposes completely.

By Mr. Ward:

Q. Did you tell the committee that you were under contract to the Life Underwriters Association?—A. No, fire.

The CHAIRMAN: Fire Association.

The WITNESS: Fire Underwriters Association.

By Mr. Ward:

Q. If this is not a fair question, do not answer it. Why did the Fire Underwriters Bureau or Association employ you and at the same time have their own organization, as we were told they had, to prepare maps and plans?—A. Well, I can answer that, I think, in all fairness to the Underwriters Association; I can make a map of an unprotected area, of a village or town, cheaper than they can themselves. My overhead is much less than theirs. I am doing it on a contract basis. We will say a plan costs \$350 to make. That is split pro rata amongst these companies.

By Mr. Thorson:

Q. That is in unprotected areas?—A. That is in unprotected areas. I am not making any plans of an unprotected nature for any Underwriters Association.

By Mr. Maybank:

Q. In general they do it themselves. But some amount of this overflow comes to you—that overflow of the type you have mentioned?—A. Yes, in these unprotected areas. There are not very many companies interested—probably fifteen or twenty out of a total of one hundred and sixty; and these surveys are now available to them upon a contract basis.

Mr. THORSON: How many board companies are there?

Mr. McTAVISH: About 165.

Mr. THORSON: 165 board companies and 71 non-board companies.

Mr. SCOTT: 71.

The WITNESS: I have known cases in northern Ontario towns, where an insurance company—they have located a plan; they have written to the town engineer and he has sent them down a blueprint, a field blueprint, showing them the lot number; and that is all that is necessary in these unprotected areas. There are no official street numbers. These lot numbers are there, and you can find the property.

By Mr. Donnelly:

Q. What do you mean by unprotected area?—A. An area where there is no fire protection, no water main or hydrant, no fire department to take care of fire hazards.

The CHAIRMAN: Are there any other questions, gentlemen?

Mr. SCOTT: Mr. Chairman, may I ask this witness a question or two. I did not know, of course, that any lay witnesses were going to be heard, and I have none.

Mr. Long, have you made any estimate of cost and of the time that it would take to make a survey for a fire insurance map of the city of Montreal?

The WITNESS: No.

Mr. SCOTT: Have you made any estimate of a survey, or how long it would take your organization to make fire insurance maps for the province of Quebec? You have not?

The WITNESS: No. People did suggest when I was down in Montreal some months ago—they asked me if we were going to come down to Quebec—and I said probably at a later date, but not at the present time.

Mr. SCOTT: You have made no estimate as to the time or cost of surveying every city, town and village in the province of Quebec?

The WITNESS: No.

Mr. SCOTT: With reference to making fire insurance plans?

The WITNESS: No.

Mr. SCOTT: And I take it your answer would be the same with respect to the maritime provinces?

The WITNESS: Exactly.

Mr. SCOTT: And your answer would be the same with respect to the western provinces?

The WITNESS: Absolutely.

Mr. SCOTT: And am I right in regard to the province of Ontario, which is the only province in which you have done any business, that you have not attempted to touch their cities and towns?

The WITNESS: No.

Mr. SCOTT: Is it not a fact that you were recently asked to prepare plans for the city of London and you said you were unable to do so?

The WITNESS: Yes, that is true.

Mr. SCOTT: Thank you.

The WITNESS: For this reason: I did not have the necessary finances to make a survey of the city of London, until I got the support of the companies. But there has been the feeling lately that, due to this suit that is now going on at the present time, they are buying cautiously; they do not know how this thing is going to turn out, and they are not going to invest too much money. One company came out flat-footed and wrote in connection with a certain plan, "We are not buying any more plans from any one until the Supreme Court or the courts decide on this issue."

By the Chairman:

Q. Mr. Long, will you tell us who asked you or suggested to you that you should make plans of the city of London?—A. Well—

Q. Was it a company or a non-board company?—A. The non-board companies. You see, the question of the city of London—

Q. Just a minute; the non-board companies, you say; was it an association or just a number of them or what?—A. No; individuals, sir.

[Mr. E. R. F. Long.]

Q. Certain individuals?—A. Certain individuals.

Q. How many?—A. I would imagine approximately fifteen; and how that came about—I was talking to them about other surveys, trying to get out from them their requirements, and London and Brantford were mentioned, that they would be particularly interested in the larger centres.

By Mr. Rinfret:

Q. I understood you to say that the companies had told you that they did not want any plans until the Supreme Court had passed judgment on the appeal; did you say that?—A. There is one company that has made that statement to me, within the last two weeks.

Q. Which means that if the decision of the Supreme Court was favourable to the Underwriters, then it is likely that the companies would place contracts for plans with you?—A. The probabilities are, in my own personal opinion—I am not voicing it for my associates—but I really do believe if it was made possible for them to buy freely from the Canadian Fire Underwriters' Association, we would get practically no support at all except in special cases where the Underwriters did not have a plan.

Mr. MARTIN: I suggest, Mr. Chairman, that evidence will be properly before the minister or before the commissioner of patents.

By Mr. Donnelly:

Q. Mr. Long, are you suggesting that this committee make it possible or make it necessary to make two or three surveys of each of these cities, like London? You have a survey already. You want another survey?—A. No. The only thing I am trying to point out is that it is possible for non-board companies to make their own plans. For instance, the large majority of non-board companies still retain or still have the Goad's plan of 1915 of the city of London, and they themselves could see that that plan was revised and brought up to date.

Q. Very well.

The CHAIRMAN: Thank you, Mr. Long. Is that everything, Mr. McTavish?

Mr. McTAVISH: That is all, thank you, Mr. Chairman.

The CHAIRMAN: Now, will someone move that Mr. Scott be heard?

Mr. THORSON: I move that Mr. Scott be heard.

Mr. SCOTT: If I might take a moment or two, I should like to reply briefly.

The CHAIRMAN: Would you come up here to the front, please?

Mr. SCOTT: I might say, Mr. Chairman and gentlemen, that we never contemplated that this was going to develop into any fact-finding committee with lay witnesses. I thought Mr. Mann and ourselves would outline the respective positions in the matter. We have no lay witnesses here.

Mr. THORSON: It is not going to be fact-finding at all, either for lay or professional witnesses.

Mr. SCOTT: Quite so. I understand. As the first point, I simply want to say that according to my instructions there is not in existence in Canada at the present time any map-making company that is able to furnish fire insurance maps for the Dominion of Canada, or particularly the province of Ontario and Quebec, within any reasonable or practical length of time or for a practical cost that is within the bounds of commercial possibility. I will say that is our case, and I will leave that point at that. I mention it because there is an indication in the statement made by Mr. Mann, page 17 and pages 26-27, that there are several map-making companies able to supply similar service to the non-board companies in Canada. We do not admit that for one single minute, and at the proper time and place we are willing to bring forward evidence to that effect.

Mr. MAYBANK: Whatever there are in that way, they are much too small.

Mr. SCOTT: Yes. It is perfectly obvious that we would not be going to all this trouble if we could purchase these from anybody else.

The CHAIRMAN: Mr. Scott, may I ask you a question. Whom are you acting for—the non-board companies—71 non-board companies?

Mr. SCOTT: I am acting for a group.

The CHAIRMAN: Which is the group; how many?

Mr. SCOTT: I gave the names the other day.

The CHAIRMAN: How many, approximately?

Mr. MARTIN: About how many?

Mr. SCOTT: Fifteen—twenty—or thirty-three.

Mr. McTAVISH: Thirty-three.

Mr. SCOTT: Thirty-three sent petitions to the Secretary of State—thirty-four, as a matter of fact.

The CHAIRMAN: I understood the last witness to intimate that if he had purchasers or sanctions of purchasers or requests for services from 71 non-board companies, he could do about anything that they wanted him to do.

Mr. MAYBANK: He said 71; I think he said about fifteen came to him.

The CHAIRMAN: Yes.

Mr. MAYBANK: Mr. Scott stated there were 71 non-board companies.

Mr. SCOTT: Of course, Mr. Chairman, every one of those 71 would not necessarily be interested, for instance, in London, Ontario.

Mr. MAYBANK: No.

Mr. SCOTT: Or Winnipeg, Manitoba. That same rule applies as regards the board companies. Every board company of Canada does not cover every single town. In answer to another question that was asked yesterday by Mr. Maybank—he wanted to know from Mr. Mann and I would like to give Mr. Maybank an answer now—how many of the surveys are original by the Underwriters Survey Bureau, Limited, and how many are based on Goad's surveys? Was that your question?

Mr. MAYBANK: I do not think I asked that.

Mr. WARD: I asked that question.

Mr. MAYBANK: But it is all right. I am interested in the answer just the same.

Mr. SCOTT: I am dealing now with the provinces of Ontario and Quebec, with which I am familiar, and this is taken from the memorandum prepared by the underwriters in 1935. Out of 28,761 sheets which are Goad's, new surveys made by the bureau are only 661; 661 out of 28,761.

Mr. THORSON: When you give the figures with regard to Goads, do you mean Goad's maps unrevised?

Mr. SCOTT: I beg your pardon?

Mr. THORSON: You mean Goad's maps unrevised?

Mr. MAYBANK: Unrevised.

Mr. SCOTT: And revised. This is all Goads. This is all the original survey made by Goads.

Mr. THORSON: It is all original survey made by Goads. But to what extent is there new material in it?

Mr. SCOTT: That varies with the different plans, according to the amount of building.

Mr. THORSON: And with many of them you would not recognize them as the original Goads maps.

[Mr. W. B. Scott, K.C.]

Mr. SCOTT: Possibly that is correct in many cases.

Mr. MAYBANK: What were those figures again—28 hundred and something.

Mr. WARD: 28,000.

Mr. MAYBANK: You gave two figures, what were they?

Mr. SCOTT: Of the plans presently in existence in the province of Quebec and Ontario alone, 28,761 sheets go back to their source to Goads surveys, original Goads surveys.

Mr. MAYBANK: Yes.

Mr. SCOTT: And as Mr. Thorson has said, they were superimposed upon and added to and so on and so forth; and 661—

Mr. MAYBANK: —are original?

Mr. SCOTT: —are original with Underwriters Survey Bureau, Limited.

Mr. MAYBANK: I suppose, in estimating this matter, that we may say that—in that 28 thousand odd maps, if you were estimating their importance, you would give to some a different weight than you would to many others?

Mr. SCOTT: Yes.

Mr. MAYBANK: And likewise, as you pointed out to Mr. Thorson, some are more revised or superimposed upon than the others?

Mr. SCOTT: Yes.

Mr. MAYBANK: So that all told, we are not getting much in the way of comparison.

Mr. THORSON: No.

The WITNESS: Not by itself.

Mr. MAYBANK: Or as a basis of comparison.

Mr. SCOTT: It is just to answer the question we were asked to answer.

Mr. MAYBANK: I am not criticizing you.

Mr. THORSON: They really could not.

Mr. MAYBANK: I am not criticizing; but the question was asked.

Mr. SCOTT: In conclusion, Hon. Mr. Cahan has given such a careful, precise and accurate statement of the law of copyright with respect to publication and published works that I do not wish to add anything to it except to say that we entirely agree with it. The whole difficulty here arises not only for fire insurance plans, but for every scientific work such as he mentioned through this fact, that somebody—and this is very interesting, Mr. Chairman,—that somebody has conceived the idea that in between published works in their popular sense—and, mind you, the Copyright Act was drawn up, and the Berne convention, primarily with reference to books; the idea of map and scientific compilations, if you look through everything, was only a secondary consideration. I have read through Hansard when that section 14 was put in in 1921. There was a very long and careful debate over the whole thing, and the whole idea uppermost throughout was that of books; maps and scientific compilations was only a secondary consideration. The whole difficulty here is this—and I would like to forget all about fire insurance maps and plans—in between publication in its popular ordinary sense, as the man in the street understands it or as 99 people out of 100, including lawyers, understand it—in between publication and in between the word “unpublished” or unpublished works apparently lies a no man’s land which believe that by not issuing to the whole public, they can issue in hundreds and in thousands and still, under the judicial interpretation of the courts, claim that they are unpublished. This definition of unpublished and publication is not something new that arises from the Massie and Renwick case at all. We have only got to refer to the last edition of Coppinger, the seventh edition, page 27; the whole thing is set out there. As life goes on, as

trade and commerce develop, as scientific work and medical knowledge progresses, different problems come up. We submit, sir, that there is confronting this committee, or confronting the public of Canada, a situation where, with great respect, we suggest that an abuse can be committed by reason of people being able to say that we are not publishing within the sense given in the English decisions—Coppinger and so on—and therefore, we are entitled to issue scientific works and compilations of that character to a certain limited class, but on condition that they resell their services for certain prices and charges.

Mr. THORSON: You would not go so far as to say that there should be no such area? You called it a "no man's land." You would not go so far as to say that there should be no such area; that is, that there should be no possibility of a limited circulation amongst a group of persons who form a society, and still have that regarded as not published within the meaning of being published to the public?

Mr. SCOTT: Oh, no.

Mr. THORSON: It is desirable to have that limited field?

Mr. SCOTT: Absolutely, absolutely.

Mr. THORSON: And the whole question is what use should be made of that limitation or right?

Mr. SCOTT: Absolutely. You might have a bar society or you might have any other kind of association you wanted, that circulated a pamphlet around amongst its members for consideration and study.

Mr. THORSON: And yet be an unpublished work?

Mr. SCOTT: And yet be an unpublished work; absolutely.

Mr. THORSON: Quite so.

Mr. SCOTT: I only suggest to you that getting into the commercial field is something different.

Mr. MAYBANK: The point of difference then, or the point of departure would be that when a thing is put to some commercial use, it should be lifted out of that; there should be the possibility of lifting it out of that so-called "no man's land."

Mr. SCOTT: When it has gone into general circulation.

Mr. MARTIN: That is all.

Mr. SCOTT: May I make a correction? I have tried to be as accurate as I could.

Mr. THORSON: I think you have been.

Mr. SCOTT: There is a stenographic error here in the first day's proceedings. It says, "71 out of 73 of these non-tariff companies." The correct figure appears later on; it is 33 out of 71.

Mr. MARTIN: That has been corrected.

The CHAIRMAN: Now, what shall our procedure be? We have heard all the evidence, have we?

Mr. MARTIN: Yes.

Mr. THORSON: Mr. Chairman, I would suggest that we should have an opportunity of having the evidence before us, and of then discussing the matter from the point of view of the principle involved at a subsequent session. I do not think we will be able at the present time to take part in a discussion that would be of real value.

Mr. MAYBANK: I think we might as well adjourn.

The CHAIRMAN: The minister has just suggested that it is quite possible if we want him to have the commissioner of patents here or any officials of the departments, for him to arrange it.

Mr. THORSON: When we are considering what report we should make?

Hon. Mr. RINFRET: Or the under-secretary of state, either.

Mr. MARTIN: I think it would be very helpful if we could have the commissioner of patents here.

The CHAIRMAN: Shall we adjourn until the printed evidence is before us? Is that your suggestion?

Mr. THORSON: Yes. I think it would be of great help if both the commissioner of patents and the under-secretary of state were here.

The CHAIRMAN: At our next meeting?

Mr. THORSON: At our next meeting, at which we can consider the question.

Mr. MARTIN: To-morrow morning, Mr. Chairman.

The CHAIRMAN: No. We will not have the printed evidence before to-morrow. Next week.

Mr. MARTIN: The only difficulty, Mr. Chairman, is this: the printed evidence, all except this morning's, will be available to-morrow; and, in any event, what has taken place here is not really going to decide whether or not we favour this principle or not. We should get the commissioner of patents here to get his point of view on the matter, and then we will be in a position to discuss and determine the principle involved.

The CHAIRMAN: Gentlemen, the clerk of the committee informs me that yesterday's evidence may not have come from the printer and may not be in the hands of the members for study by to-morrow. So we will adjourn to the call of the chair.

The committee adjourned at 12.35 p.m., to meet again at the call of the chair.

Dr. Doc
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*House Banking and Commerce
Standing Committee 1938*

SESSION 1938

HOUSE OF COMMONS

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting the

COPYRIGHT ACT

No. 4

FRIDAY, JUNE 17, 1938



WITNESS:

Dr. E. H. Coleman, K.C., Under-Secretary of State.

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1938

MINUTES OF PROCEEDINGS

FRIDAY, June 17, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Cahan, Clark (*York-Sunbury*), Coldwell, Donnelly, Dubuc, Fontaine, Howard, Kinley, Kirk, Leduc, MacDonald (*Brantford City*), McGeer, Mallette, Martin, Maybank, Moore, Stevens, Thorson, Ward.

In attendance: Hon. Fernand Rinfret, Secretary of State; Dr. E. H. Coleman, Under-Secretary of State, and Mr. J. T. Mitchell, Commissioner of Patents.

The Committee resumed consideration of the subject-matter of Bill No. 124, An Act to amend the Copyright Act.

Following a statement by the Secretary of State, Dr. Coleman was briefly examined.

On motion of Mr. Stevens,—

Resolved,—That the question under consideration be referred for study and report to a subcommittee to be selected by the Chairman.

The Committee adjourned to the call of the Chair its consideration of the subject-matter of Bill No. 124.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

June 17, 1938.

The Standing Committee on Banking and Commerce met at 11 o'clock. Mr. W. H. Moore, the chairman, presided.

The CHAIRMAN: Order, gentlemen. The minister has a statement to make.

Hon. Mr. RINFRET: Mr. Chairman, I desire to say a few words now, because I will not be able to stay with you this morning. This committee meeting has been called somewhat unexpectedly for me, and I have a very important council meeting that I must attend. I understand that the parties interested are anxious that some decision be arrived at, and I make no objection to the fact that the committee is meeting.

I want to remind you again that the committee is not a tribunal to decide finally which group of insurance men is right or wrong; but it is dealing with a very important amendment proposed to the Copyright Act. At the same time it has been considered useful, both as an illustration and to complete the record of information, to hear evidence on the insurance case, but this is only given as an illustration of what might happen. You are not to decide whether one group is right or whether another group is right, but you are to consider whether it is advisable to have as an amendment to the Copyright Act sections dealing with a possible monopoly.

I will be very frank and say that this is a very, very important matter indeed. I have not yet been able to find any country in the world where the Copyright Act contains such a provision. The reason for that is that a copyright is a much different thing from a patent. A patent deals with an object, and when the patent has been granted, nobody can make use of the object or sell it except the patentee; and if it is kept out of the market, it may be to the detriment of the public. Copyright covers a work which is the exclusive property of whoever holds the copyright; but it does not prevent anybody from writing about the same matter or from producing a work covering the same subject—whether it is a painting or whether it is music—in the same mode. In other words, the copyright does not cover a definite object, but it merely covers the production of either a writer or a composer; and there is nothing to prevent another writer from writing a book on the same subject. But it has been considered that the ownership of the original work remains either with the writer or whoever has bought the interest, the copyright, in it. I may add, though, that copyright, being a privilege granted by the state, or a right acknowledged by the state, has been surrounded with certain conditions; and in this country, at least, when a work has been published, the public market must be supplied with it. In this peculiar case, the old contention is as to whether the maps altered and completed by the underwriters are considered as published documents. I would say that if that were clear, and the documents were considered as published ones, there would probably not be needed any amendment at all.

Mr. MARTIN: In this particular case.

Hon. Mr. RINFRET: Anyway, what I want to bring out in this initial statement is that what you are to consider, gentlemen, is as to whether, after a few days of study of the matter, you are ready to recommend that we introduce in the Copyright Act an amendment which has no similar counterpart—which does not exist in any Copyright Act in the world. As a matter of fact,

those who have asked for the amendment have been very careful to see that it would only apply to domestic works. As the minister in charge of copyright, I may warn you on this point, that every time we have wanted to amend the Copyright Act against owners of the copyright, and it has been found out that this was not international practice, it has always been suggested that we do that in this country anyway. I do not consider that it is fair to our own authors and composers, the copyright owners, to say that a disposition which is not wanted in any other country and which we cannot impose in this country on foreign works, should nevertheless apply here, no matter whether or not it hurts local production. It is true that the last draft has been made in such a way as to exclude literary or artistic work, but I will say this: You have heard the authors, several of them professors of the university. If you bring in a group of men interested in copyright, they would all pronounce against this amendment. There is no doubt about that.

What I want the committee to realize is that they are not to adopt or recommend legislation merely to meet the special insurance case, but that they should deal with the matter at large, and it is a very involved question. As I know, there has been pressure on the present committee and on the minister to hurry this matter through. My first point would be that, on the contrary, it should be very carefully considered. The second point is this: It just happens that the insurance case, which would have been the pivot of all this work, is now sub judice before the Supreme Court. I might as well be very fair. I have been considering this matter right along, and I have come to the conclusion that no matter whether there is or is not an amendment, whether the bill is put through or not, the department would not feel itself at liberty to pronounce upon this case until the case has been disposed of by the Supreme Court. I will not go into the details as to distinguishing between what has been submitted to the court and what is intended to be dealt with here. But I consider there is a close enough connection between the two aspects of the cases to justify the department in refraining from taking any action or rendering any further decision in the insurance case until the judgment of the Supreme Court has been rendered. So, for both these reasons,—on account of the fact that the amendment in a general way is a very involved matter, and on account of the fact that whether it is or is not put through, it could not be of immediate application,—I was going to ask the committee not to hurry its decision, but to consider the matter very fully. I would further ask, if there is a report made to the Secretary of State, that it should not be made in the spirit of putting through anything at all that might just adjust itself to this case, but that it should be made with a view to recommending an action that would be real improvement to the Copyright Act. Of course, if there is a claim of monopoly, there is always recourse to the Combines Act, which applies not only to copyrights or patents but to trade generally.

I have been asked—not in an official way, but in a tentative way, if I might say so—whether the department would prepare a draft bill or not. I do not think the committee should recommend that to the Department of State. I think the committee should, in the first place, consider whether it is desirable to recommend an amendment to the Copyright Act in principle. When once that has been decided, then the question of drafting a bill might come in. But I have my doubts, gentlemen, as to whether, whatever work is done in this matter, we might reach any immediate action for the reason that I have just indicated. Now, my purpose in coming here is that my officers are here, both the under-secretary of state and the commissioner of patents; they will naturally supply you with any information which you may desire. But I do not think they should be asked as to matters of policy. That is the reason I made my pronouncement at the beginning of this meeting. I indicated that I had to be

elsewhere, but at the same time if some members of the committee feel that they might like to put a question before I leave, I will be quite willing to attend the first part of the meeting.

MR. MAYBANK: There is just this question, Mr. Rinfret. Am I right that you were expressing the view,—in fact, I think you indicated it certainly to be the case—that if any change were to be made, as I might put it, penalizing or restricting any copyright owner, it could only be, in your view, as respects a copyright owner who is a Canadian himself; that is, it could only touch the domestically owned ones, and only in respect to Canada, and that it is useless to think about any kind of amendment which might extend to some persons outside the boundary lines of Canada? Am I right?

HON. MR. RINFRET: That is what has been proposed. Of course, nothing has been accomplished yet. But you are right in stating that according to the international convention we could not make a disposition such as the one that has been proposed, except against domestic owners. Perhaps I should not say “against”, but at least concerning domestic owners.

MR. MAYBANK: Let us put it this way. Suppose we were considering an amendment, and its effect upon some scientific work circulating in the way this is circulating—in the way these maps have been circulating, and apparently a monopoly had been created, and this scientific work was owned by some person in New York. You feel that we might just as well stop considering that because we run into the Berne convention right away.

HON. MR. RINFRET: Well, that is my view. Of course, the way the act presently stands, there is no disposition either in Canada or any other country. But if this is made, it could not apply to this maps case without touching Canadian property; but if some kind of scientific work was the property of someone in England or in France, and for some reason the owner of the copyright chose to sell that work only to certain institutions and not to others, my claim is that we could not amend the act in such a way as to force that copyright owner to put the work at the disposal of the public. That was made very plain when the license clauses were adopted allowing the printing of books in Canada, on licence. It had to be made to apply only to Canadian copyright owners. That is one of my objections. Where we are prevented by international agreement from doing certain things, I object to saying that we should impose them on our own people.

MR. MAYBANK: May I follow that point up? For example, in this particular matter, if these maps were owned by the XYZ company in New York, we would be up against the difficulty you have mentioned.

HON. MR. RINFRET: Well, just to show how complicated the matter is—in United States we have a different situation, because you are not subject—United States is not a member of the international convention. They have their own special agreement with us. But that just shows you how involved this question is. What I wanted to impress upon the committee were two main things—in the first place that this amendment was quite a departure and should not be recommended in a hasty way; and in the second place, that inasmuch as the whole procedure issues from that insurance case, I thought I would have the frankness to inform the committee that the department would not feel at liberty to deal with that case, even with an amendment to the act, until the supreme court had pronounced on it—which means many months, if not a year.

MR. MARTIN: Mr. Chairman, before the minister leaves the committee, I should like to make one or two observations in connection with what he has just said. I say with the greatest respect that the position he takes this morning is substantially different from the position taken at the last meeting of the committee when he pointed out that he was essentially responsible for referring

the subject matter to this committee, and that he would not want the committee to dissolve without, first of all, having given the matter consideration and made some sort of recommendation with respect to the principle involved. I agreed with his stand then, and I think it is the one we should pursue now. The merits of this particular dispute between these two companies, I agree—

Mr. MAYBANK: There has been a change in that?

Mr. MARTIN: No, I do not think so. As to the dispute between these two companies, I agree we have gone perhaps further than we should have gone into it; and I quite agree that when the matter comes to the minister for consideration, he might be perfectly justified—while there is not any great connection between the dispute and the matter that is before the court, but because there is some relation he might well suspend judgment. But this is not the issue. The issue here is a simple one, as I see it; and I do not profess to pit my knowledge against the minister's, because he certainly knows much more about these things than I can pretend to. But the issue is a simple one, namely, that we are merely considering whether or not there should be in the Copyright Act a provision for dealing with abuses of copyright. That is the only issue. While he says—and it is no argument to say so—that while other countries have not got such a provision, that in itself is an argument why we should not incorporate the adoption of this principle in the Act, I suggest that it is not a sound argument. We have got to make up our own minds whether or not in this country we are going to allow any copyright to create an abuse.

Hon. Mr. RINFRET: Will you allow me to interrupt?

Mr. MARTIN: Certainly.

Hon. Mr. RINFRET: I agree with that. My point is that we should not be hasty in our decision to meet a special case, because it would meet it anyway; but I agree with my hon. friend that we might consider the amendment.

Mr. MARTIN: Yes. I am glad to hear that. I misunderstood the minister on that point. Now, Mr. Chairman, my final observation is this: The Canadian Authors Association were here the other day. I happen to be their chief honorary counsel; they still indicated confidence in me, by re-electing me the day before yesterday, in spite of my stand. What I want to say is this: There is not any desire on my part or on the part of those who were made responsible for this bill, to interfere with their interests. We have had conferences with them, and I must say—having in mind my prior responsibility—the attitude they have taken is this: We recognize that you do not want to interfere with our rights as authors in respect to literary and artistic works. We recognize that. But this section 14 is our Magna Charta and any interference, whether it directly affects us or not, is calculated to have the effect of a precedent, inviting future amendments. Well, that is certainly no argument. The minister has not said—but he being of a literary turn of mind himself, I hope he has not been too greatly persuaded by their presence in the city this week; I know that they almost influenced me. But, assuming that the principle is worth adopting, surely we can provide in the act by a special clause a clear exemption in so far as this measure is concerned, in respect of literary and artistic works.

Mr. KINLEY: Why should we? If it is a good law, it is good for them the same as for everybody else.

Mr. MARTIN: I should think that that point required no explanation; but if the hon. member is serious in that objection, I do not mind explaining it.

Mr. KINLEY: It is obvious.

Mr. MARTIN: You cannot obviously put a premium on. The chairman has written books, and they are good books. If you were to compel the publication of those books when he did not want it—and it is not likely, because the royalties would cease if that was the case—

Hon. Mr. RINFRET: I suppose my hon. friend realizes that in a great number of cases we have very great difficulty in deciding whether a thing is literary or otherwise.

Mr. MARTIN: I do not deny that. But surely when he was speaking the other day, Mr. Cahan gave us the true picture. I mean, it happens. I am frank enough to say that I never thought of this until this particular problem came to hand. This dispute between these two corporations is the provocation for this bill. But once the bill was introduced, a little bit of study revealed that there might be very many other abuses; and these were very admirably stated by Mr. Cahan at the meeting before last. I think the principle is a very important one. Are we going to allow a monopoly in respect of a copyright to go on creating abuse after abuse, when the general interest demands a change? Finally, I quite agree with the minister that we should not be hasty about the matter. But the principle is one that is pretty clear; I do not think it requires much thinking. We have called his officers here for the purpose of assisting us; and I do suggest, Mr. Minister, that the matter is one which, if it is at all possible, should be given attention this year.

Hon. Mr. RINFRET: There is another point that has been raised by Mr. Martin about abuses of that kind in other fields. I may say that no man — and I say that with much sincerity — has more esteem and admiration for the former Secretary of State than I have. For five years he did work in that department, and it has been definitely improved in every branch. I may say that I do not think Canada has ever been graced with a better Secretary of State than the Hon. Mr. Cahan. But I must say that within the five years I was in the department before him, and in the three years since we have been back in power, I do not remember of one case that has been brought to my attention, except the insurance case. I always come back to the point that I would not want any act to be amended to meet any special case. That is my main point. It would be quite easy to have a definition distinguishing between maps and a literary work. We all agreed on that. But when you want to draw a line between a certain kind of works that would come under the amendment as proposed and another kind, it would be a very hard thing to do indeed. That is why I say that if this bill is merely one to settle an insurance dispute, then we are wasting our time, because it cannot do it now. That is what I want to make clear to the committee. But if the committee is really interested in amending the Copyright Act at large, then this work may be very valuable indeed. But the matter should be approached with much care. I will leave you with my officers, and they will supply any information that is required; but naturally they are not expected to pronounce upon any matter of policy. I am very sorry I have to retire.

Mr. THORSON: Mr. Chairman, it would seem that there are three principles, perhaps, involved in the reference before us, and I think they were all enunciated by Mr. Cahan when he made his statement. The first one, I think, is this: The Copyright Act is a public act, and we should be very careful, indeed, that we should not make amendments to the Copyright Act, which is a public act, for the purpose of resolving in any way a private dispute or a private controversy. I would think, therefore, that while this controversy between the tariff and the non-tariff companies is before the court no amendment to the Copyright Act relating to the controversy in any way, shape or form should be made. That, perhaps, is the first principle that we should follow. The other two principles were also enunciated by Mr. Cahan, as I recall them. The contention is made by the underwriters association that they have a copyright in an unpublished work. Now, the question we have to consider in regard to that is this: How far shall a work be deemed to be an unpublished work, although it is circulated fairly widely? If an association owns a copyright in a work and circulates that work

amongst the members of the association, or agents of the members, exclusively for its own purposes, then it would appear that that is an unpublished work, because publication has not been made of it to the public.

That principle, I believe, should be safeguarded because if an individual owns copyrighted work and does not publish it, quite obviously he should not in any way be forced to sell that work to the public if he does not wish to do so. The same principle applies to an association that uses the work solely and exclusively for its own purposes.

We come now to a broader line of controversy: If an association uses a work of that sort not exclusively for its own purposes, but in such a manner as to compel other persons to come into this association for the purpose, let us say, of maintaining rates at a certain level, that, I would say, might well be considered as an abuse of the copyright that it has in the work by reason of its being an unpublished work.

We should certainly take steps in some form or another to correct that kind of abuse and set up some machinery for dealing with that kind of abuse. There might be some merit in some of the suggestions contained in the bill that came before the House that brought to this committee the reference of the subject matter of the bill. There might be some merit in some of the proposals; for that purpose that kind of an amendment should be drafted in a general way and would have to be drafted with extreme care. I do not believe that we can sit down and draft the necessary amendment. I believe that should be done by the officers of the Department of the Secretary of State and the officers of the Department of Justice, in consultation with the Commissioner of Patents and Copyrights, so that all the implications of the whole controversy may be kept in mind.

Then, a third question arises. Suppose it is found by the tribunal that is set up to consider whether there has been or has not been an abuse of copyright, that there has been an abuse and persons wish to buy copies of the work in which copyright is said to exist? The question of compensation then arises. That is the third question which I believe we ought to consider. The persons who have this copyrighted work unpublished are entitled to receive fair compensation if they are forced to sell or if it is held that in the public interest they should sell. That compensation should be paid. Upon what principle, on the other hand, that compensation should be based is a very difficult question. Let us take by way of illustration what I have in mind, the controversy that has been aired before this committee. The Underwriters' Association have the Goad plans. They have the Goad plans on which they have superimposed their own work, and they have their own exclusive plans which they have created entirely themselves. They have spent, as I understand it, about \$2,000,000 on this work. They sell their plans to their own members and to brokers who are associated with them.

Suppose the Commissioner of Patents forces them to sell the plans to non-tariff companies. At what price shall these plans be sold? I do not attempt now to enunciate the principle. It has been suggested that the non-board companies should have the right to buy these plans at the same rate as the members of the Underwriters' Association now buy them. Would that be fair after the Underwriters' Association have built up all this machinery, put all this money into the investment to create this very valuable asset? It might be necessary to go further than that and require purchasers of these plans to pay a pro rata percentage of the capital that has gone into the whole venture in addition to the actual price that is required. Now, that requires a statement of the principle that should be applied in fixing compensation. It would seem to me that that question is beyond us. I mean, there are so many implications involved in that that a statement of these principles will require extreme care on the part of draftsmen, and that statement, I submit, should also be left to the officers of

the Department of the Secretary of State, the officers of the Department of Justice and the Commissioner of Patents and Copyright.

These, Mr. Chairman, are the three principles which I see involved in this controversy before us.

Mr. MARTIN: I think we ought to hear Mr. Coleman.

Dr. E. H. COLEMAN called.

The WITNESS: I hardly know upon what particular point I can enlighten the committee, Mr. Chairman. In the first place, however, you will note that the proposed bill is an amendment to section 14, and it occurred to the Commissioner of Patents and to me that it might be of some interest to the committee to know how many applications have been made under section 14 of the Copyright Act. If it is agreeable to you I shall read the record. The first one was made on the 5th April, 1924, in respect to the "Boston Cooking Book" by Fanny M. Farmer. The second was on the 24th April, 1924, "Hardware and Metal, Waste and Distribution," by publisher of *Hardware and Metal*, July 24, 1924. The third was an application in respect to the book called "Jalna," by Mazo de la Roche, October 12, 1927. The owners of the copyright complied with the requirements of the Copyright Act and it was not found necessary to grant a licence. The fourth was with regard to the song, "Will You Remember," from "Maytime," by Sigmund Romberg, in April, 1937. In that case also the owners of the copyright complied with the requirements of the Copyright Act and it was not necessary to grant a licence. The application was withdrawn.

These are the four cases where applications have been made under section 14. In respect of a further one by a non-tariff insurance company, it was dealt with by the minister in April of this year.

By Mr. Maybank:

Q. That would also include any record of any other case where an unpublished work similar to this—A. Yes, that is the complete record from the files of the Commissioner of Patents.

Q. What was that first date?—A. April 5, 1924.

Q. So your record was from 1924 to 1938?—A. Yes.

By Mr. Martin:

Q. I presume you have had the opportunity of reading some of the evidence?—A. I have read the evidence which was given on the 9th June, and this morning at 10 o'clock I received No. 2, which was Tuesday, June 14.

Q. I should have prefaced my question. Have you had an opportunity of reading Mr. Cahan's statement?—A. I read it in a very hasty fashion. I received it at 10 o'clock this morning, and I was here at 11.

Q. It was said in that statement that there were a numebr of instances where there was at least a possible potential abuse in respect to other matters than the one in particular dispute, to which, unfortunately, we have confined so much attention. Now, having in mind these possible abuses, do you think the Patent and Copyright Act—I am not asking about policy now—could be amended satisfactorily so as to take care of these abuses by the adoption of the bill proposed which is in draft form and before the committee?—A. I would hesitate to express a definite opinion upon the terms of the Act and the proposed amendments, Mr. Martin.

Q. I think we might ignore the proposed amendment. You can regard that as being wholly inadequate.—A. I would think if the committee desired such an amendment that any proposed legislation would require very, very careful study.

Q. Quite.—A. Because I believe the Act would throw a very heavy burden upon the Commissioner of Patents in the absence of any elucidation of what might be meant by “abuse.” If you will look at section 65 of the Patents Act you will find that exclusive rights in a patent may be deemed to have been abused in any of the following circumstances, and then they enumerate in subsections (a) to (f) what the abuses are. Obviously that is a great aid to the commissioner in dealing with any applications under the Patent Act.

Q. Let me put a specific case to you. There was, you will remember, a dispute which arose out of an alleged formula which a certain doctor in a certain Ontario town said he had as a guaranteed cure for cancer. Assume that formula were in the form of a published work, and assume the doctor did not wish to give it to the public when it might be of very great interest to the public, could we not provide for such a contingency?—A. If you decide—

Mr. KINLEY: So unnatural.

Mr. HOWARD: No, it is not.

Mr. MARTIN: That actually did arise.

Mr. MAYBANK: Mr. Chairman, let us get the answer to that question.

The WITNESS: I should think in a case like that you would first have to decide whether public policy required such a formula should be divulged. There might be quite a difference of opinion in that respect, Mr. Martin.

By Mr. Martin:

Q. I quite agree, but my question was more to the mechanism of bringing that about, assuming the policy were declared.

By Mr. Maybank:

Q. To add to the other assumption that you have introduced, you would put this one, and also let us assume it is desirable the public should have it. So that it is really a question based on not quite half a dozen assumptions, but several.

By Mr. Thorson:

Q. What are the difficulties?

Mr. HOWARD: Let us have the answer.

Mr. MARTIN: I do not think Mr. Coleman has finished.

The WITNESS: I have said all I can on that.

By Mr. Thorson:

Q. What are the difficulties that you see in framing a definition of abuse in connection with the Copyright Act?—A. Well, I believe we would have to look at all the other sections of the Act firstly. We would then have to look at the international conventions, study any implications which may follow from our legislation.

Q. That was going to be my second question. Assume that it would be possible to frame a definition of what would constitute an abuse—that admittedly is difficult, because then you have to go into particularization—A. Yes.

Q. Assume it were possible to frame the definition of abuse, to what extent would we fall foul of international conventions in view of the fact that no other Copyright Act contains provisions of the kind that we are contemplating?—A. I am sure, Mr. Thorson, that is a question we would have to study for a considerable length of time.

Q. That also is a very difficult question?—A. That also is a very difficult question, I believe.

[Dr. E. H. Coleman, K.C.]

Mr. MARTIN: It is admitted that these things are very difficult.

By Mr. Donnelly:

Q. If you have provisions dealing with abuses of the Patent Act, why is it not possible to have provisions dealing with abuse of the Copyright Act?—
A. I have not said it is not possible.

Q. I understand that, but that looks to me like the crux of the whole question.—A. I said any proposed legislation, in my opinion, would have to be carefully studied in the light of international conventions and in the light of the other provisions of the Act, and it would be very desirable that the word "abuse" should be defined.

By Mr. Maybank:

Q. I was thinking this: it seems clear that if we were agreed that such a condition did exist, and we undertook to legislate to prevent that abuse, a transfer of the rights of the Canadian to some foreigner would immediately render any steps that we might take completely inoperative.—A. I would not be prepared to say that without very careful study. That is why I said you would have to study this in the light of our international arrangements.

Q. Again putting the question on certain assumptions, the first assumption is that any legislation that we decide to draft would not touch the foreigner. We are clear on that, we shall assume—

The CHAIRMAN: You mean the foreigner operating in Canada?

Mr. MAYBANK: Yes. I am saying the assumption is that any legislation drafted shall not touch the foreigner operating in Canada. Now, agreeing with that, it could result and would almost necessarily result, would it not, that as soon as the rights of the Canadian which we were attacking went into the hands of a foreigner the attack would be immediately nugatory, unimportant; that is, we are balked at once the foreigner gets himself into the position in which the Canadian at this moment is. Is not that right?

The WITNESS: Right.

By Mr. Maybank:

Q. Based on the assumption, of course.

By Mr. Martin:

Q. Dr. Coleman, you mentioned possibility of a conflict between the proposed Act and the Berne convention. Are you making that as a serious objection?—A. I would say it would require very careful study.

Q. It is intended merely to apply to domestic works, and would not section 17 of the Copyright Act take care of that?—A. 16 (h)?

Q. No, article 17 of the Rome Copyright Convention, page 13.—A. Yes, I have that.

Q. Then, subsection (8) of section 17 would preclude an assignment?—
A. I think your reference indicated the necessity of very careful study. That was the point I was trying to make.

Mr. MAYBANK: I want to clear up—

Mr. MARTIN: I have not finished one point.

The CHAIRMAN: The reporter is having very great difficulty in following your questions. If you will stand and speak a little louder I think it might be a convenience to everybody. Now, order, please.

By Mr. Martin:

Q. Now, Dr. Coleman.—A. If you look at article 17 of the convention—I would hesitate to interpret it—I think you will find it relates to matters of

domestic policy, and you will notice it refers to the word "police." I think it might be something which the government of the state might regard as undesirable for circulation by reason of—

By Hon. Mr. Stevens:

Q. You refer to article 17?—A. Article 17 of the convention.

By Mr. Maybank:

Q. I wanted to clear up a misconception that I myself may have created in the question I asked Dr. Coleman a little while ago. I believe I spoke as though in the event of legislation of the type being considered being passed, that the owner of a copyright in Canada might transfer it to a foreigner and thus render nugatory our legislation. I believe I was in error in any such suggestion because I think it only applies to Canadian authors, not to the owner of the copyright. I want to clear that up because I believe I was wrong in that.

By Hon. Mr. Stevens:

Q. The first reference to article 17 which has been mentioned in my opinion is not broad enough to serve the purpose, because obviously the suggestion here is what one finds in other treaties dealing with entirely different subjects, namely, that each country may control or prohibit by measures of domestic legislation or police, the circulation of representations, etc. The point there is to prevent this convention or the joining of this convention from interfering with the Criminal Code or other statutory laws of the country. I believe that is the object of that section; but what I was going to ask Mr. Coleman was this, and then I have a suggestion to make to the committee before I sit down. I notice, Mr. Coleman, that—again referring to this matter before us—one of the difficulties in connection with it is the question of the issue of new plans, maps and schedules of one kind and another incident to the business. That sort of thing is defined, as far as I can see, in only two sections in the interpretation clause. For instance, books shall include "every volume, part or division of volume, pamphlet, sheet or letter-press, sheet of music, map, chart or plans separately produced", and I notice in the evidence which was presented to us that it was argued that these highly technical and scientific works, these plans, came under that definition. The point I would like to suggest to you is this: Does it not appear that in the original drafting of this act, such plans, charts and so on as are mentioned here, were intended to apply to maps, plans or such things as would be inserted in a book and form part of the book? I know that it is interpreted in another way, but I say it seems to me that that is indicated. Therefore would you consider that it might be advisable to amend the definition so as to clearly define commercial plans and charts and so forth? That is one point. Then if you will turn over to "n" in the same section, you will find "literary work" includes maps, charts, plans, tables and compilations; so that while these two definitions define maps and so forth, yet there is no definition clearly applicable to purely commercial or scientific plans or maps used for commercial purposes. That is one point, and I think that is important for this reason; the abuse that the committee has had in mind is the possibility of creating a sort of combine or exclusive power that would effectively be a combine.

MR. MAYBANK: Mr. Coleman, would you say whether in the notes you have in front of you, there is some amendment to "n" which Mr. Stevens has referred to? I have some words scribbled in here, and I thought your book would be complete.

HON. MR. STEVENS: It might have been amended with the subsequent Act.

MR. MAYBANK: Is there any amendment to "n"?

HON. MR. STEVENS: I do not see any.

[Dr. E. H. Coleman, K.C.]

Mr. MAYBANK: I do not say definitely there is, but I have some notes scribbled in here.

Mr. COLEMAN: In the act of 1931?

Mr. MAYBANK: No, "n", literary work.

Hon. Mr. STEVENS: No, I do not see any amendment in 1931 dealing with that. It may be there.

Mr. MAYBANK: I do not say there is. There is a note I had that suggests it. I just wanted to clear it up.

Mr. COLEMAN: There is a definition in the 1931 amending Act:

"'Every original literary, dramatic, musical and artistic work' shall include every original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets, and other writings, lectures, dramatic or dramatico-musical works, musical works or compositions with or without words, illustrations, sketches, and plastic words relative to geography, topography, architecture or science."

Mr. MAYBANK: That does not touch this subsection "n".

The CHAIRMAN: Mr. Stevens has the floor.

Mr. MAYBANK: I am sorry.

Hon. Mr. STEVENS: Do you not think that only multiplies the confusion, Mr. Coleman?

Mr. COLEMAN: No. It is simply an amendment to show that that does include musical productions.

Mr. MAYBANK: Mr. Cahan would not agree with that statement, Mr. Stevens.

Hon. Mr. STEVENS: What I meant was this: here we have two definitions in the original Act, and those who have a complaint regarding some commercial plan might bring it under either one of these definitions and make an application accordingly. Therefore, it seems to me, Mr. Coleman, it would be desirable to clarify that definition. There is a second question I would like to submit to you and secure your opinion on, it was raised and most ably treated by Mr. Cahan the other day and it is the question of publication. I notice that in subsection 2 of section 3 of the Act of 1921 as Mr. Cahan very well pointed out the other day for the purpose of this Act, publication in relation to any work means the issue of copies of the work to the public. Well, that is simply putting it in another way. It is not really a sufficiently explicit definition. So it strikes me that there is another point that might be clarified.

What I was going to suggest, Mr. Chairman—I used this merely as an illustration of what the task or part of the task at least before the committee is—is that I believe this job could be done infinitely better if we had a sub-committee of this committee, of about four or five members sitting with yourself. Then they could clarify the situation from their standpoint, with the advice and consultation of the officers. They could clarify the situation, bring it back here; and then we would have before us something definite for the committee to consider. I make this suggestion, but I certainly would not wish to be or ask to be or suggest that I should be on the committee myself. I do not make the suggestion with that idea in mind. But I think that the committee should be composed of the chairman, Mr. Cahan, Mr. Thorson, Mr. Martin, and one or two others at the outside, who could give this matter the intensive study, for a short time, that I think it merits; because as I said at the first meeting of the committee, anything touching the Copyright Act is of very great importance and should not be attempted except after most complete consideration. Might I

move, Mr. Chairman, that a sub-committee be appointed for the purpose of studying this matter and reporting back to the committee at some subsequent date?

The CHAIRMAN: You have heard the motion. By the way, Mr. Stevens—

Hon. Mr. CAHAN: I would like to have something noted upon the record.

The CHAIRMAN: Just a minute, Mr. Cahan. I understood you to ask Dr. Coleman a certain question, Mr. Stevens?

Hon. Mr. STEVENS: Dr. Coleman nodded his head, so I took it as acquiescence. I was really illustrating what I thought or leading up to why I thought a sub-committee should be appointed.

The CHAIRMAN: All right. Now, Mr. Cahan.

Hon. Mr. CAHAN: Well, the subsequent definition in 1931 of "literary work" was inserted at the request of the Copyright Board at Berne, which has supervision of international copyright, in order that the Canadian Act might correspond more or less completely to article 2 of schedule A of the Rome Copyright Convention of 1928; and the committee which sat for weeks considering copyright, and finally proposed the 1931 Bill, thought that the words used in the 1931 Act by way of definition would meet the demands of—what do they call it?

Mr. COLEMAN: The international convention.

Hon. Mr. CAHAN: Yes; it is a board is it not? Anyway, they thought it would meet the demands of the central office, the copyright office at Berne.

Mr. HOWARD: Mr. Chairman, I am prepared to second Mr. Stevens' motion, providing it is agreed that the committee are agreed on the principles that we are trying to get at. I do not want any mistake about that.

Hon. Mr. STEVENS: We are assuming that.

The CHAIRMAN: Will you state the principles?

Mr. HOWARD: The principles are these, as stated by Mr. Thorson in one of his remarks: The Copyright Act and the Patent Act are public acts. They are to protect the interests of private individuals and, as soon as they have done that, to protect the interests of private individuals or private companies; but the general action of the act or the effect of the act must be considered to benefit the public generally in Canada. If we take that as a principle, it means a lot. From the working of both the Patent Act and the Copyright Act, as far as I am concerned, I have not any intention whatsoever of taking away from the person who gets out a copyright or writes a sheet of music or has a patent, from protecting his right of protection against infringement, providing he gives the benefit of the work to the public at a price. I do not think there is any question about that. There have been many abuses—

Mr. MAYBANK: There is no question about that.

Mr. HOWARD: No. That is the fundamental principle. Now, there have been abuses, and I could cite you many of them, but I will cite you just one case. An invention that would have saved the people of Canada a great deal of money was purchased by a company and taken off the market. That has been done; and as long as it is not attacked it goes on. But in this case every single property owner in Canada is vitally interested in the amendment to this act to provide to the companies—to reduce the cost of insurance in this specific case to every property owner in Canada; and secondly, to protect the people who own the plans, from a revenue standpoint—so as to create a revenue compensating or commensurate with what they have accomplished in the purchase and in the preparation of these plans. If those general principles are agreed on, I am prepared to second Mr. Stevens' motion; and I would suggest as one member of the committee that Mr. Stevens be on it.

[Dr. E. H. Coleman, K.C.]

The CHAIRMAN: Mr. Stevens, you heard the minister's statement this morning?

Hon. Mr. STEVENS: Yes.

The CHAIRMAN: I understood from the minister that it was not the disposition of the government to deal with the matter this year.

Mr. MARTIN: He did not say that.

Mr. MAYBANK: He said not to hurry; and we have not much time left.

Hon. Mr. STEVENS: You will recall that he confirmed his statement of two or three days ago, that he invited the committee to study it.

The CHAIRMAN: Yes, to make a suggestion; but it was not the disposition of the government to deal with this matter until after the court had made a decision.

Hon. Mr. STEVENS: That is up to them.

Mr. MARTIN: In this particular matter, yes.

Mr. KINLEY: Mr. Chairman, this bill is a bill presented by a private member; and I assume that the department saw no glaring iniquities in the act or they themselves would have been presenting legislation. Have they presented legislation of this kind at any time for this amendment?

Mr. MAYBANK: No.

Mr. KINLEY: No. Well, the point is this: we might talk about principles all we like, but it is clear that this bill was conceived and had its birth in the difficulties of two insurance companies. It was introduced by a private member, and immediately the bill comes before the committee, the two insurance companies have their solicitors here to argue the case. Now, the authors were here also. They say, "This does not suit us. It is an invasion of our Magna Charta." The man who introduced the bill, of course, in order to make it run smoothly, said, "We will exempt you. We will exempt the authors from this bill, and you will not be affected." I say that it is an unnatural thing for anybody who has a work not to want it to be published, because the publication of the work is the part of it that he needs for his revenue; and therefore except in special cases, it is an unnatural thing.

Now, in the minds of this committee, and in the minds of the business men, sometimes we get the impression that in this insurance business—and I am not in the insurance business; I have been dealing with insurance companies all my life, and I have been dealing with tariff companies and with non-tariff companies—that the saviour of the situation is the non-tariff company, that it is a kind of philanthropic organization which goes around, has kept down the rates and is saving the insurance situation in Canada. Well, now the man in that business is a business man. He is just like the other fellow, he is taking advantage of his opportunities; and as long as he does business and takes advantage of his opportunities, all right. But if he wants to do business and invade the situation that has been created by somebody else, invade an organization that, I think, may also be said to be in the public interest—while, as a business man, I like to flirt with him when he comes in and deal with him, and divide my insurance—as a public legislator I want to deal with it on the merits of the case. Now, the tariff man comes in, and his rates are published, and the non-tariff man knows what the tariff rates are. He will come to you. You have \$100,000 or \$200,000 or half a million dollars of insurance to place. He will say, "We would like to have some of that insurance." You say, "Yes? Well, what is your rate?" He gets the tariff rate and finds out all about it and he says, "I will give you just a little under it," and he does give you just a little under it, and you perhaps give him the insurance; or you may write the tariff man and say, "The non-tariff man was here and he wants to do so-and-so; you fellows had better take this into consideration." And sometimes they do.

Mr. HOWARD: Not very often.

Mr. KINLEY: But these plans, these Goad's plans that we are speaking about, are something that these people have developed. It is part of their organization, their machinery of doing business. Now, it is quite conceivable that they do not want to give them to their competitors, and that they say, "If you want to do business, do it on your own feet." And being here, judging between the two, I am inclined to agree that this is a place where they do invade the situation. Then again, you will have a loss, and you will say, or they will say, "We will send an adjustor." The tariff company will send an adjustor and the other man immediately says, "I will not send any adjustor. I will accept the tariff company's adjustment of the case." You see there where he gets clear of considerable expense of doing business. Then in every town around will come men—inspectors, fire marshals—and these men who come around endeavour to keep up the degree of safety, to make the risks safer; they will inspect your property.

Mr. HOWARD: Why?

Mr. KINLEY: For the purpose of seeing to it that the hazard is less—which is a very legitimate and proper thing to do. The man goes around and does that, and he will divide the town into certain hazards. The non-tariff company accepts all these provisions and they are so vulnerable—that is, they are in a position that they can accept them without cost to themselves; because the average man who does insurance business will do business respecting some part of his insurance with the tariff company and some part of it with the non-tariff company. Now, the tariff structure is made up by a conference of these companies who get together for that purpose. It is not necessary that it will be higher. It may be for the very purpose of having uniformity in getting the rates as low as possible. But you can see the minute that is done somebody will try to invade the situation. We have no objection to invading it, but they should invade it on proper grounds. It is the same thing as with the railroads. The railroads must publish rates. A fellow comes along with a truck, and the country builds the roads for him, and he has certain privileges that the other man has not got; he begins to carry business on a non-economic cost, and he gets business away from the railroad and he gets it unfairly. The same racket is carried on in practically every field of business in this country. Where you have the person who is established and who has an overhead and who performs certain services for the country and certain services for the business, the other man will come along and try to get the advantage of the services; and whether he should get them or not is a matter of public policy, purely. I am not interested in any insurance company. I did have a share in some of the non-tariff companies, but I sold out a long time ago. I am interested in some of the mutual insurance companies in this country. But I believe they perform a service; but they perform that service in the interest of the man who insures and in their own interest also. But in dealing with legislation here we should deal with it on its merits, and we should see to it that one man does not high-jack the property of another man. For that reason it seems to me that there is no public need for this legislation at all. The department of state is not asking for it. They take a very non-committal attitude. It is obvious that this is for one purpose and that one purpose is in the interest of the non-tariff companies; that they may get hold of these Goad's plans. It seems to me that when general legislation must be made to exclude others, the people who are really the big part of the whole picture, we should go carefully; and in these dying hours of the session I think we might as well forget all about this legislation.

The CHAIRMAN: You heard Mr. Stevens' motion, gentlemen, seconded by Mr. Howard? What is the disposition of the committee?

(Carried.)

[Dr. E. H. Coleman, K.C.]

The CHAIRMAN: What about the names of the members of the committee—the personnel of the committee? Have you named them, Mr. Stevens?

Hon. Mr. STEVENS: I would suggest, Mr. Chairman, that you name them. I made one or two suggestions merely for the purpose of indication.

The CHAIRMAN: The committee to be named by the chairman?

Some Hon. MEMBERS: Yes.

(Carried.)

The CHAIRMAN: Then shall we adjourn consideration of this matter?

Some Hon. MEMBERS: Yes.

The committee proceeded to consideration of Bill B-2 of the Senate, after which the committee adjourned to the call of the chair.

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SESSION 1939

HOUSE OF COMMONS

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

BILL 132

An Act to Incorporate the

CENTRAL MORTGAGE BANK

No. 1

MONDAY, MAY 29, 1939

WITNESS:

Mr. P. D'Arcy Leonard



OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1939

ORDER OF REFERENCE

FRIDAY, May 26, 1939.

Ordered, That the following Bill be referred to the said Committee:—

Bill No. 132, An Act to incorporate the Central Mortgage Bank.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

MONDAY, May 29, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m. Mr. Moore, the Chairman, presided.

Members present: Messrs. Cahan, Cleaver, Coldwell, Donnelly, Dubuc, Dunning, Hill, Ilsley, Jaques, Kinley, Landeryou, McPhee, Maybank, Moore, Perley, Plaxton, Quelch, Ross (*St. Paul's*), Stevens, Taylor (*Nanaimo*), Thorson, Tucker, Ward, White.

In attendance: Dr. W. C. Clark, Deputy Minister of Finance and several representatives of Insurance, Loan, Mortgage and Investment Companies.

The Committee had under consideration Bill No. 132, An Act to incorporate the Central Mortgage Bank.

Hon. Mr. Dunning, Minister of Finance, made a brief statement on the proposed legislation. He also referred to a letter received from a member of the Senate suggesting that the Senators be invited to attend the sittings of the Committee during the consideration of this bill.

Ordered that such an invitation be extended to the Honourable Members of the Senate.

On motion of Mr. Kinley,

Resolved,—That representatives of the financial institutions present be heard, providing they present their views with as little duplication as possible, and preferably by selecting one of their group to make the presentation.

Mr. T. D'Arcy Leonard, K.C., General Counsel for the Dominion Mortgage and Investment Company, was called.

Mr. Leonard made a general statement and was questioned.

At 1 o'clock the Committee adjourned until 4 p.m.

AFTERNOON SITTING

The Committee resumed at 4 o'clock.

Members present: Messrs. Cahan, Cleaver, Coldwell, Donnelly, Dubuc, Dunning, Hill, Ilsley, Jaques, Kinley, Kirk, Landeryou, Leduc, McPhee, Maybank, Moore, Perley, Plaxton, Quelch, Ross (*St. Paul's*), Stevens, Taylor (*Nanaimo*), Thorson, Tucker, Ward.

Mr. Leonard recalled and further examined.

At the request of the Committee, Mr. Leonard agreed to submit a list of the member companies in the Association represented by him.

Witness retired.

The suggestion having been made that individual companies be heard, it was agreed to refer the matter to the companies themselves as to their desire to make representations through one or more of their representatives.

Statistics relative to mortgages in Canada, submitted by the Minister of Finance, appear as an Appendix to this day's proceedings.

At 6 o'clock the Committee adjourned until to-morrow, Tuesday, May 30, at 11.15 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

May, 29, 1939.

The Standing Committee on Banking and Commerce met at 11.20 a.m. The Chairman, Mr. W. H. Moore, presided.

The CHAIRMAN: Order, gentlemen. "An Act to Incorporate the Central Mortgage Bank." Is it your pleasure to have a statement from the minister?

Hon. Mr. DUNNING: Mr. Chairman, before making a statement, may I say to the committee that I have a letter here from a senator in which he suggests that when the banking committee of the house meets, the committee should send an invitation to the senators to come as guests to listen to the representations made to this committee. "The reason I suggest this is I think it will save time, because, otherwise, it will simply mean there would have to be a meeting of the banking committee of the Senate to hear the evidence all over again." My impression was that the senators are perfectly free to attend as members of the general public, any meeting of a committee of the House of Commons, but, perhaps, Mr. Chairman, the committee might like to do something specific in that regard. I think the suggestion was made from the standpoint of expediting business. Perhaps it would be well to let it go on the record that senators will be especially welcome.

The CHAIRMAN: Bill 132, an Act to Incorporate the Central Mortgage Bank. Shall the preamble carry?

Mr. CLEAVER: I wonder, Mr. Chairman, if it would not be well to have there just a general statement from the minister?

Hon. Mr. DUNNING: Mr. Chairman, I do not want to take either the time or space on the record which would involve traversing again the ground which has already been covered in the House of Commons on the financial resolution and also on the second reading. Perhaps, if I were to refer the committee for the sake of greater clarity to *Hansard* of May 6th, page 3921, and *Hansard* of May 23rd, commencing at page 4691, a perusal of those two issues of *Hansard* of the House of Commons will supply anything which might be lacking in any statement which I might make this morning.

The principle of the bill is based entirely on voluntary co-operation because, of course, the jurisdiction of the dominion over mortgages is limited, except under the bankruptcy principle which has been applied in the Farmers' Creditors' Arrangement Act. The terms of the measure are limited to certain classes of corporate lenders, for the reason that we can offer them certain inducements in return for their acceptance of certain obligations. I dealt in the house with the obligations we asked lenders to accept. I might say—

Hon. Mr. CAHAN: Would the minister speak a little more loudly, please?

Hon. Mr. DUNNING: I will try to do so.

The member companies created by the bill will be required to adjust their existing mortgages in accordance with the terms of it; that is, to write off all arrears of interest in excess of two years on all farm mortgages; and on all urban home mortgages in which the principal sum does not exceed \$7,000. They will also be required to adjust the terms of such mortgages to a future interest rate of 5 per cent, and to adopt the amortization principle of repayment over a term of years.

Mr. PLAXTON: Is there any fixed term?

Hon. Mr. DUNNING: Twenty years except for certain special categories of loans. Offered to the lending institutions is, first, that the mortgage bank to be created will issue its own 3 per cent 20 year debentures to the lending institution to the extent of 50 per cent of the loss incurred by the lending institution in carrying out the obligations respecting write-offs to which I have just referred.

The member company also will get the right to sell its own long term securities to the Central Mortgage Bank as a means of raising funds at any time in the future. It is obvious that the provisions of such a bill cannot be adopted to provide for individual private mortgage loans. In the case of the institution its obvious that that degree of security enabling close interest rates can be secured only by reason of the fact that good and poor mortgages all go into the pot, so to speak, whereas any machinery which had for its object dealing with individual mortgages on a voluntary basis obviously would not bring in those individual mortgages which were in good standing from the standpoint of the lender, and would only bring in those which from the standpoint of the lender were bad.

Mr. CLEAVER: Mr. Chairman—

Hon. Mr. DUNNING: Would my hon. friend allow me to finish? I know I am not telling members of the committee anything new, but at the request of the committee I am trying to make what is practically over again the statement I made in the house for the sake of the record of this committee.

I need not go further into difficulties connected with trying to deal with individual mortgagees; they will be apparent in the minds of all the members of the committee: this much is apparent, however, that the terms upon which mortgage funds will in future be made available from any source will beyond doubt be affected competitively by the results of the operation of the law we are now considering. That is to say, if as a result of the operation of this bill institutions are lending money, are willing to lend money on proper security under the terms of the law at lower rates of interest than prevail on the part of private mortgagees, the tendency will be either: 1, for the institutional lenders to get the business; or 2, for the private lending rate to be reduced. Also, of course, there is the fact that corporate creditors are subject at the present time to public supervision, and many of them to public regulation and legislative restriction in the making of their loans. I am speaking now particularly of the insurance companies whose terms of making loans in so far as proportion, security and that sort of thing, are subject to the terms of the Insurance Act. There are certain restrictions also under the Trust Companies Act; whereas, of course, a private mortgagee can make any terms he wishes.

The capital set-up of the bank I need not go over; we will come to it in the relevant sections. It is intended that the bank shall be a part of the Bank of Canada and under the control of the chief officers of the Bank of Canada. An impression has gone abroad it seems that it is the intention to have the officers of the Bank of Canada undertaking the actual mortgage aspect of the business. I might say in that regard that it is quite clear to my mind, and the bill leaves ample scope for it, that the intention would be to secure the ablest possible mortgage men, that is, men who have had experience in the mortgage field, to undertake the detailed direction and operation of the mortgage bank, but under the general direction of the Bank of Canada.

I do not know that I need to make any more lengthy statement than this at the present time, Mr. Chairman. There has been a little discussion on a couple of points I might mention as possibly tending to clarify the later discussion, and that is with respect to the control of interest rates on future borrowings contemplated by certain sections of the bill which will be examined. The argument is made, and with some force, that if a company, notably an insurance company, which under the normal operation of its business will not

require to re-finance through the medium of the Central Mortgage Bank—that it is unfair and unjust to cause such a company to bind its lending rates for the future to the rates set by the bank in accordance with the terms of the bill. I am inclined to view that as reasonable, believing also that the competitive aspect which I mentioned a few moments ago will exercise its influence on the broad field of mortgage lending. But I will propose in proper time clarification of that section which has to do with future borrowing, making it clear that any lending institution which avails itself of the refinancing provisions of the law will be required to abide by the regulations of the bank under the law with respect to the lending of that money which it secures from the Central Mortgage Bank. There has been a lot of complaint also with respect to the magnitude of the task involved in appraisals. The financial press also has been quite critical in that regard, with special reference to the physical problem of making so many appraisals and the delays which will be caused. I realize that the problem of appraisals is difficult and burdensome. I have also realized that good, sound and reasonable appraisals are of vital importance, and we gave a lot of thought to the machinery for so doing in devising the bill.

After all, though, are not the difficulties in connection with appraisals greatly exaggerated by the critics? Would there not be a considerable proportion of mortgages where it would be clearly evident from the record that the mortgage at present outstanding did not amount to 80 per cent of the appraised value of the property? I suggest that it is clearly evident that there will be many, hundred of thousands, in that class; all of that class are immediately eliminated as an appraisal problem. It is only when you get to the place where there is some doubt in the mind of the borrower or in the mind of the lender that the appraised value is over 80 per cent of the present loan that it is necessary to create appraisal machinery at all; and while perhaps in some areas of the country, inevitably in the west, appraisals will be numerous, may I suggest that even there adjustments which have been made during the last number of years, voluntary adjustments in some cases, adjustments by virtue of the operation of the Farmers' Creditors Arrangement Act in other cases, will even there have modified to some extent the numerical problem of appraisal. That is to say, to the extent that adjustment has already been made palpably reducing the value below the limit required by the law it is evident that no duplicate problem of appraisal will be involved in such a case. I believe, personally, that given reasonable co-operation—and I hope we will get it, I believe we will get it that the appraisal aspect of the problem can be worked out with reasonable expedition and with reasonable efficiency and satisfaction to those concerned. Perhaps we might be able to deal with a substantial number of cases subject to later appraisal; that is, in order to shorten any period of confusion which might otherwise exist we might be able to devise machinery which would involve making of adjustments on a tentative basis subject to later appraisal and further adjustment if such should be necessary.

Mr. DONNELLY: Is not the province of Saskatchewan making an appraisal of all farm lands in the province at the present time?

Hon. Mr. DUNNING: I am not aware of that.

Mr. DONNELLY: I think so. I am quite certain they are.

Hon. Mr. DUNNING: Not from the standpoint of loan values, rather from the standpoint of municipal assessment purposes.

Mr. DONNELLY: Not for mortgage purposes, but for municipal assessment purposes.

Hon. Mr. DUNNING: Oh, yes.

Mr. DONNELLY: That should be of assistance in the case of provinces which are now doing that kind of work.

Hon. Mr. DUNNING: Information being secured in such a manner would be of assistance but could not be regarded as an appraisal for these purposes obviously though such information would provide much of the basis for this work. But if it proved to be possible, as I hope it will, to shorten the period of uncertainty on the part of the borrower and of possible confusion by arranging for adjustment even in advance of appraisals, the appraisals could be made and further adjustments if necessary. I believe that the right degree of co-operation would make that possible and, perhaps, it may be, that such procedure could apply under the present terms of the bill. I thought that it was possible. However, if it is not I see no reason why section 17, sub-section (1) should not be clarified in such a way as to provide that the Central Mortgage Bank may accept if it deems desirable an appraisal agreed upon between the mortgagor and the mortgagee.

I don't want, Mr. Chairman, to take up the time of the committee going over each section of the bill because obviously when the committee has the bill before it it wants to proceed in a regular manner as not to have the discussion confused by jumping ahead to sections which have not yet been reached; and I think, therefore, that that is all I have to say at the moment, except that I am advised that representatives of the many institutions are here. I understand they desire to make some general representations with respect to the bill and I think perhaps it would be convenient to hear them at this stage before we start on the sections of the bill. However, that is for the committee to decide. At least, the committee would get an idea of the attitudes of the lending institutions by listening to their representations before proceeding with the bill in detail. I make that suggestion, Mr. Chairman.

Mr. LANDERYOU: Might I ask a question of the minister?

The CHAIRMAN: Mr. Cleaver has the floor, if questions are to be asked.

Mr. CLEAVER: I do not wish to put my questions now if it is the wish of the committee that we should hear from the lending companies, but I have a question which I would like to ask the minister when the proper time arises.

The CHAIRMAN: Is it the pleasure of the committee that we should have a general discussion arising out of what the minister has said, or that we should proceed with hearing representatives of the loan companies first?

Mr. DONNELLY: I suggest that we proceed with the loan companies.

Mr. COLDWELL: Has any provision been made to hear also representations, or to get advice, from the provinces that have made a study of the debt situation? That has been done in some of the provinces, and I have in mind particularly Professor Hope, of Saskatchewan. It seems to me that if we are going to hear the point of view of the lending institutions it would be well to get the point of view of men like Professor Hope who advised the Bracken government, and who has also produced a number of official bulletins on debt in that province, and there may be others in the other western provinces who have given the matter special attention, but I had in mind particularly Professor Hope. I was wondering if any thought had been given to the calling of someone who would represent the point of view to which I have referred, and of those who have inquired into the volume of debt.

The CHAIRMAN: I should think, Mr. Coldwell, that the proceedings of the committee are open to Professor Hope if he cares to appear. Shall we then proceed to hear from the mortgage companies?

Hon. Mr. CAHAN: Mr. Chairman, these different sections are so unrelated in their effect that for a careful study of the bill I suggest we should not be confined to the discussion section by section. I suggest that we should hear the mortgage companies and others on the bill, the general tenor of the bill,

its general effect, and such other considerations as they wish to bring before us, and then before we enter upon a discussion of particular sections the members of the committee might be permitted to discuss the bill generally.

Mr. LANDERYOU: This is such an important bill that I do not think we should rush it through at all. I think the fullest opportunity should be given for this committee to give their opinion on the bill and to ask questions not only of representatives of the lending institutions but also to get the opinions of the various provinces. I have here Hansard of May 23rd where the minister points out that the financial institutions are opposed to this, and then he makes reference to the provinces and states the matter involves the property and civil rights of the provinces. Now, I would like to hear from the minister just what opinion the provinces hold with respect to this legislation, or has this just been dropped into the lap of parliament without referring the matter to the provinces for opinion; and if so, I would like to see representations from the provinces as well as representations from the financial institutions concerned.

Hon. Mr. DUNNING: Well, Mr. Chairman, this legislation has not been formally submitted to the provinces. There was no necessity so to do, because not in any manner does it invade or seek to invade the jurisdiction of any of the provinces. What it merely does is what other legislation enacted by this parliament does,—examples are legion,—it says with respect to certain matters the dominion is willing to allow the national credit to be used, but in doing so it must lay down the conditions under which that credit shall be used to the extent that such conditions require voluntary compliance by anyone whether mortgagee, lender or province. To that extent it is a privilege of any of these parties either to comply or not to comply. Since this measure was first announced to the house I have had no representations against it from any of the provinces. I am quite sure that if in any respect it had been considered an invasion of provincial rights we would have heard ere now from all the provinces with regard to it. This bill is conceived in the spirit of a desire to help the provinces with what is admittedly one of their most difficult and serious problems; and I should be very much surprised indeed if any province protests being offered assistance in its mortgage problems such as is done by this bill.

Mr. WARD: I would like to point out to those who suggest bringing this matter to the attention of the provinces that I can't follow their argument. I imagine that we have about the most representative delegation that could come from any province here in the persons of our federal members, and surely dealing with matters that are properly within the jurisdiction of this parliament that representation is quite adequate. For that reason I think we should not waste any time talking about referring the matter to the provinces or bringing delegations from provincial legislatures. Let us go forward and as federal members deal with this all-important subject and let it become law as soon as possible.

Mr. LANDERYOU: May I point out to my hon. friend that some of the provinces in western Canada have already entered the field and are already dealing with the question themselves, and in some cases legislation has already been passed. I don't want to enter into any general discussion, but as far as I am concerned I would like to have information from the provinces as to how their debt legislation is working out, and what effect this legislation will have upon the whole mortgage set-up of the provinces. I do know this, that one of the most fundamental requirements with respect to debt legislation is that of taking into consideration the actual conditions prevailing in the province. I think this matter should receive very thorough consideration.

Mr. KINLEY: It has been suggested that we hear the representatives of financial institutions who are here this morning. I think the information they have to give us would be most enlightening, but I do suggest, Mr. Chairman, that their presentation should be made in such a way that each one would not be repeating the same general story. I see that there are a number of them present, and I was wondering if they could sort of get together and have someone present their views. Such an arrangement would save time for the committee, and possibly that is a suggestion which would find favour with them.

The CHAIRMAN: Will you make a motion to that effect, Mr. Kinley? I think that is necessary.

Mr. KINLEY: I will make a motion that they be heard, and that the chairman indicate that they should present their views with as little duplication as possible, preferably by appointing someone from their group to make the presentation.

The CHAIRMAN: I understand that Mr. Leonard is representing the companies.

Mr. TUCKER: There is just one question I should like to ask the minister; with respect to those provinces who have formulated a scheme, are they permitted to enter under this scheme?

Hon. Mr. DUNNING: Not within its present scope, no.

Mr. LANDERYOU: Has the minister been requested by these large lending institutions to enact debt legislation?

Hon. Mr. DUNNING: No.

Mr. P. D'ARCY LEONARD, called.

The CHAIRMAN: Mr. Leonard, will you please give the committee your placement?

The WITNESS: Mr. Chairman, honourable ministers and members of the Banking and Commerce Committee, I am appearing on behalf of the Dominion Mortgage and Investment Association.

Hon. Mr. STEVENS: Which represents—

The WITNESS: That association comprises the leading life insurance companies, loan companies and trust companies doing business throughout Canada. There are approximately 50 member companies in the organization, representing mortgage investments of roughly \$580,000,000 throughout Canada. The association, therefore, comprises the same classes of membership as are contemplated by the Central Mortgage Bank bill. The association does not comprise all the institutions of that character; it just represents a substantial group of them.

Mr. CLEAVER: Perhaps we can have a list placed on the record of the actual companies?

Mr. LANDERYOU: With their head offices.

The WITNESS: I will be very glad to supply that if it is the wish of the committee. The association is also a purely voluntary organization and does not in any way speak on behalf of the individual member companies as to their control of their own business. It does not control them in any way, so any decisions relative to the individual companies are always decisions made by that company.

Hon. Mr. STEVENS: Your head office is in Toronto

The WITNESS: The office is in Toronto, but the the Dominion Mortgage Association comprises companies, though, that have business head offices throughout Canada.

Mr. LANDERYOU: Do you represent American firms, foreign firms and British firms?

[Mr. P. D'Arcy Leonard.]

The WITNESS: Speaking offhand, I think there is one American company, a life insurance company, a member of the association. There are no British companies that I can think of offhand other than those that may be represented through an organization that was lending for them in Canada and which might be a member of the association. But as it is a matter for the individual decision of a company as to joining the Central Mortgage Bank, and as this association does not speak for individual companies in the conduct of their business, what I should like to do, with the permission of the committee, is to present, as was mentioned, a general outline of the bill from the standpoint of the companies generally, recognizing that in the last analysis the question of membership in the bank depends upon the decision of each company. As to what that decision may be as to any particular company, the association is not in a position to speak. But bearing in mind what is the intention of the bill, the suggestions in a general way that I desire to put forward are from the standpoint, if the bill is to accomplish the purpose that is intended, of its being necessary to have a sufficiently large volume of business represented by those companies that do become members; and therefore knowing the difficulties in the way of companies generally as to becoming members of the bank, it is my desire to speak to you and submit to you what the difficulties may be, so that if that could be remedied then the intent of the bill may be expedited by the membership that would then join. Here I am speaking of individual companies.

In dealing with that the bill really presents three different aspects. One is the adjustment of existing farm mortgages; the second is the adjustment of existing city mortgages, and the third is the feature—

Hon. Mr. DUNNING: Urban, rather than city.

The WITNESS: Excuse me, Mr. Dunning, you are quite correct. I should have said urban mortgages classified as non-farm homes under \$7,000 in the bill.

When one is considering the question of membership in a Central Mortgage Bank, the third thing that I should like to put before you is provision for funds for future lending. These are the three aspects that I should like to discuss.

Hon. Mr. STEVENS: For new mortgages?

The WITNESS: For new mortgages, yes. In dealing with that I should like, first of all, to indicate to you the variety of businesses that would be represented by the various companies. One company will have a large number of farm mortgages, another will have a large amount of city mortgages. Geographically there will be variations. There are variations among life insurance companies, loan and trust companies, variations dependent upon the cost of their money to them and their cost of doing business. All these variations have to be taken into account if in the final result there is to be a comprehensive achievement which will be what the bill contemplates by reason of having a sufficient volume brought under it.

Dealing first of all with the first aspect, the adjustment of existing farm mortgages, our companies—speaking now generally on behalf of them—have recognized a problem as having existed for a number of years in connection with the agricultural industry as a whole, which is reflected in the ability or inability of the industry to carry the debts and the mortgages to the full extent of their contracts. We, as an association, have been endeavouring to deal with that; we have done a number of things in our own way through voluntary adjustments. There have been also adjustments made through the Farmers' Creditors Arrangement Act. There have been such general voluntary adjustment plans as the plan in Saskatchewan and Manitoba in 1936 wherein through our group some \$20,000,000 odd was written off mortgages of the farmers throughout Manitoba and Saskatchewan. There have been in addition other adjustments in other provinces, and the association and the member companies have recognized that there has existed and still exists a problem in respect to the

mortgage debts and other debts of the agricultural industry. We recognize that it is still the most important industry in Canada, and efforts must be made the same way that efforts have to be made to improve other distressed industries, for example, the construction industry which was unduly depressed, in the interest of the national economy as a whole; that there is justification for some measure, based on, I think as the hon. Mr. Dunning has put it much better than I can, the use of the national credit in terms of public need. We recognize that there is that need relating to the agricultural industry. In so far as this bill proposes adjustment of existing farm mortgage debts (which would reduce the rate of interest to 5 per cent on farm mortgage debts throughout Canada and make available the write off of accumulated arrears of interest over two years and would provide further the writing down of the mortgages so that they would not exceed 80 per cent of a fair appraised value) it is the general submission of this association that I represent that such a step would be a desirable contribution in the interests of rehabilitation of Canadian agriculture, consistent with the duties and responsibilities of the board of directors or executives of these companies who have themselves to answer to the people whose funds they hold and are invested in mortgages. Consistent with their duties and responsibilities they desire to make their contribution, to do as much as they can and to approve in principle of this adjustment so far as farm mortgages are concerned.

In coming then to put that into practical application, the difficulties that arise are, I would say, three in number at the beginning. The first is that in endeavouring to cope with this farm mortgage situation the bill provides the same method of treatment for urban mortgages. Before going on to put before you what appear to us to be the basic difficulties in the problem and in the circumstances distinguishing the urban mortgage situation from the farm mortgage situation, I should just like to repeat what I said at the outset. I should like to refer again to the variations of businesses among the classes of companies eligible for membership in the Central Mortgage Bank. Where there are great differences as between urban mortgage holdings and farm mortgage holdings, it becomes important, if we are to have a sufficient volume of business represented in the membership, to analyse and see whether the same method of treatment should be applied, or could be applied to the two classifications. If, for example, the attempts to deal with the urban mortgage problem block or prevent a company from doing what it would like to do in connection with the farm mortgage situation, then the decision of the company is going to be governed accordingly.

Now, coming back to the two classifications of the first problem in connection with the farm mortgages, you are dealing with a distressed industry. A farmer is absolutely dependent almost invariably upon the industry, upon the price of farm products, upon whether he gets a crop or not, as to whether he is going to be able to pay his debts; and when you get a whole industry distressed, then you run into a general situation applicable to the general debt situation. By contrast, in connection with the urban mortgages, the urban home owner, his ability to pay is not directly related to the value or the productivity of his security; he depends for his earning power, for his ability to pay, on outside factors, and to generalize, there are two exceptions. The general picture as a whole recognizes there has not been, and is not to-day, the same general situation with respect to home owners from the standpoint of ability to pay as there is in connection with the agricultural industry. In any attempt to apply the same method of treatment, the result is that the urban home owner—who is able to pay by reason of his earning power, apart from the value of his security—is going to be given a reduced rate of interest if it is over 5 per cent and a reduction in the amount of his claim, if it is over 80 per cent of the value, notwithstanding that he may be perfectly able to pay his mortgage and to pay his

[Mr. P. D'Arcy Leonard.]

current rate of interest. I cannot say that this is an average picture, but I give it to you for the purpose of illustrating this point. If you take a company that has three or four times as many urban mortgages as farm mortgages and consider that its ability to make a contribution in the share of the losses on farm mortgages has a definite limitation by reason of its own obligations, to the extent to which it is obliged to write down perfectly good assets and reduce its earning power on its city mortgages where the need does not exist it becomes unable to give the same measure of relief in connection with farm mortgages. I am not in any way exaggerating this point. It is a major difficulty in the way of membership in the Central Mortgage Bank. Case after case appears from the records of the institution where—cases of men who are perfectly able to pay; their accounts are in perfectly good shape; the value has depreciated but they could pay their mortgage off; they could reduce it; they can pay the current interest—for their own particular purposes and on a basis quite satisfactory to the company the mortgage is carried on.

I should like to go on from there and, having tried to point out the differences between the two situations, try to analyze what might be the problem in connection with urban mortgages. From the standpoint of the study that our companies have been able to give to this matter since the bill was introduced, it appears to us that the solution to the problem that exists in connection with city mortgages—which might call for the use of federal credit or national credit in terms of the general need, and where our companies might be able also to make their contribution without blocking the first step, that of the adjustment of debts of the agricultural industry—would be if the urban mortgage problem were confined to that which we say exists, namely, to what we call non-current mortgages. In almost every province of Canada there has been some form of moratorium or debt adjustment legislation from the early stages of the depression. In one form or another that legislation has been on the basis that when a mortgage matured, the mortgagee could not proceed except by a permission from a court or debt adjustment board. The result has been that where contracts have been made—either new mortgages, new agreements or renewals—during the past few years, they have been voluntarily made by the mortgagor coming in and entering into a new agreement, under present mortgage conditions, under present interest rates, with present values in mind, and giving up, when he does that, the protection that he had under the provincial legislation on the existing mortgage. Furthermore, the standard term of mortgages in Canada has been a five-year term. Therefore, most of the mortgages—to an extent—I might almost call universal—that were made prior to the depression have matured; and, therefore, they have been dealt with in either one form or another; they have been paid off by a new mortgage or they have been renewed in accordance with existing conditions or they still stand overdue. It is this, the last category, that presents the problem. The reason that they stand overdue and that they carry the higher interest rates is that they are the accounts where the value has depreciated or where the man has not been able to carry on and keep up his mortgage contract or reduce the principal. That is, as we see it, the problem in connection with urban mortgages. If the bill could be confined to dealing with that, in so far as urban mortgages are concerned, it would make it a good deal more likely that the other problem, the adjustment of farm mortgages, could be more effectively dealt with. There is not the same reason for dealing with the farm mortgage situation on that basis—that is, by the application only to non-current contracts—for a number of reasons. One is that we are dealing again with an industry, whether or not there have been renewals; another is that there have been very few mortgage contracts or agreements of sale during the last two years; and the third reason is that the renewals that have been made have been largely renewals made by creditors by way of adjustment. They have been trying to bring the contract within the ambit of present conditions. If the

bill could be confined to dealing with that problem of urban mortgages, thereby enabling many companies, who otherwise could not come within it, to absorb the losses represented by the farm mortgage adjustment, the next difficulty is one that the hon. Mr. Dunning mentioned, and that is what I should call mechanics. If the suggestion that he has made could be adopted, it would go a long way towards overcoming the mechanical difficulties that at the present time seem almost insuperable. It has been impossible to estimate the number of mortgages involved throughout the association under this bill. Roughly—and purely roughly and tentatively—I suggest an estimate of 50,000 farm mortgages among our companies; and the total number of our city mortgages roughly runs about 100,000.

Hon. Mr. DUNNING: In this class?

The WITNESS: No. I was going down to qualify that by saying that it has not yet been possible to get any estimate of how many of that 100,000 would come within the category of non-farm homes where the mortgage again was less than \$7,000. One reason for that is that there is as yet no definition of a non-farm home.

Mr. CLEAVER: Have you the amount of dollars involved as to each of those classifications you gave us?

The WITNESS: Roughly, again, Mr. Cleaver, I would put it at about—

Mr. CLEAVER: As to the farms?

The WITNESS: \$200,000,000.

Mr. CLEAVER: For the 50,000 farms?

The WITNESS: Yes. Probably it is nearer 60,000 in the case of farms, I think.

Mr. PLAXTON: When you are speaking of urban loans, are you referring to non-current mortgages?

The WITNESS: No; under the bill as it stands, Mr. Plaxton.

Hon. Mr. DUNNING: But in the figures you gave, Mr. Leonard, on non-farm mortgages or city mortgages as you choose to call them, those figures of 100,000 represent all loans.

The WITNESS: Yes.

Hon. Mr. STEVENS: Good and bad.

Hon. Mr. DUNNING: Not merely those under \$7,000 which are brought within the scope of the bill.

Hon. Mr. STEVENS: The larger ones too.

The WITNESS: That is right. In other words, there has not been—information has not been available as to what the break-down would be to bring it within the terms of the bill.

The CHAIRMAN: Mr. Leonard, you are speaking only of mortgages held by members of your association?

The WITNESS: Yes.

Mr. LANDERYOU: You have no idea of what percentage of the total mortgages that would make?

The WITNESS: Of the total mortgage debt?

Mr. LANDERYOU: Yes.

The WITNESS: What that \$580,000,000 would be compared with the total mortgage debt?

Mr. LANDERYOU: No. You say you have 50,000 farm mortgages or a total of \$200,000,000. Can you tell us what the percentage of that is to the total mortgages in Canada? Have you any idea?

[Mr. P. D'Arcy Leonard.]

The WITNESS: Not offhand. I think the census has a figure of the total mortgage debt throughout Canada. It is on record. Dr. Clark may have that. I would not like to mention it offhand.

Mr. COLDWELL: That is for 1931.

The WITNESS: Yes; I think that is right.

Mr. CLEAVER: Have you the dollars involved as to the 100,000 urban mortgages?

Hon. Mr. DUNNING: Perhaps this would be a good place to put on the record the figures given in the census of 1931, dealing with the mortgages on terms being operated by their owners—that is the census classification. The total for Canada is \$671,000,000.

Mr. COLDWELL: Are there any figures for the other classification, may I ask?

Hon. Mr. DUNNING: I can give this farm mortgage debt by provinces as revealed by the census; that is, a breakdown of the \$671,000,000.

Mr. COLDWELL: You have not the other figures, the total?

Hon. Mr. DUNNING: I have not the urban figures here. The census does not give information respecting urban mortgages. The breakdown by provinces of these farm mortgages, which I shall just give in straight millions, leaving off the odd hundred thousands, is as follows:—

British Columbia.. . . .	\$ 15,000,000
Alberta.. . . .	107,000,000
Saskatchewan.. . . .	175,000,000
Manitoba.. . . .	59,000,000
Ontario.. . . .	199,000,000
Quebec.. . . .	96,000,000
New Brunswick.. . . .	6,000,000
Prince Edward Island.. . . .	4,000,000
Nova Scotia.. . . .	6,000,000

Mr. LANDERYOU: That is not the total farm mortgage debt. That is just the total mortgage debt of owners.

Hon. Mr. DUNNING: Mortgages on farms being operated by their owners. Perhaps it might be well to say also in connection with this figure that the total for Canada, the \$671,000,000, would of course include the farm mortgages held by various governmental farm mortgage organizations. If memory serves me rightly, the Canadian Farm Loan Board has about \$34,000,000 or \$35,000,000; then in Quebec the provincial scheme has about \$30,000,000; in Ontario, my memory is—

Mr. COLDWELL: About \$45,000,000.

Hon. Mr. DUNNING: Between \$40,000,000 and \$50,000,000. In Saskatchewan, the old farm loan scheme still has, I think, about \$20,000,000.

Mr. COLDWELL: About that.

Hon. Mr. DUNNING: About \$20,000,000; I am not sure of that.

Mr. COLDWELL: That is right.

Hon. Mr. DUNNING: The correct Saskatchewan figure here is 16·3 million instead of 20 million. Manitoba has \$4,000,000 in its governmental scheme and Ontario about \$45,000,000. Those are the more important qualifications to the \$671,000,000 figure for the whole dominion. The other important qualification, of course, is the one mentioned by Mr. Landeryou, that the census figure only deals with farms being operated by their owners.

Mr. PLAXTON: Of the 100,000 urban loans—

Hon. Mr. DUNNING: I should add to those qualifications the Soldiers Settlement mortgages which again amount to \$47,000,000, which would again be a qualifying figure, added to those I have already given, in reduction of the

\$671,000,000 figure, if we are to arrive at an approximation of what might be termed "commercial" farm mortgages.

Mr. LANDERYOU: The figure that the minister gave us was for 1931. Would you give us the figures for 1936, as contained in the report of western Canada?

Hon. Mr. DUNNING: I can only give you the result of the prairie provinces' census in 1936.

Mr. LANDERYOU: Could we have that?

Hon. Mr. DUNNING: The dominion, as a whole, of course, did not have a census in 1936. In Alberta, the total was \$108,000,000 in 1936 as compared with \$107,000,000 in 1931; in Saskatchewan, the total was \$188,000,000 in 1936 compared with \$175,000,000 in 1931; in Manitoba, the total was \$51,000,000 in 1936 compared with \$59,000,000 in 1931.

Mr. LANDERYOU: The adjustment in Saskatchewan that you mentioned took place since 1931, did it not, Mr. Leonard?

The WITNESS: It took effect as of December 31, 1936.

Hon. Mr. DUNNING: After the census.

Mr. LANDERYOU: After the census.

(Tabulated statement *re* mortgages appears as Appendix "A.")

Mr. PLAXTON: Of the 100,000 urban mortgages can you estimate what percentage are non-current?

The WITNESS: No, I cannot give that, Mr. Plaxton. I should say this, that my figures are fairly rough, because we have not obtained the exact information as to the number of mortgage accounts, and, in some cases, it has been impossible to find the classification even as between urban and farm. I am inclined to think that I am a little under in both the 100,000 figure, city, and 50,000 for farm. The point I am trying to make involves the magnitude of the mechanical end of the problem. I am using figures which I think are conservative rather than otherwise.

Mr. CLEAVER: Would you give us the dollar figure for the urban mortgages?

The WITNESS: \$389,000,000.

Mr. JAQUES: Do they include the C.P.R. and Hudson Bay figures?

The WITNESS: I am not sure as to the Hudson Bay Company. The C.P.R., no.

Hon. Mr. DUNNING: Mr. Leonard, does your total figure of \$389,000,000 outstanding by your member companies include agency and trust funds invested by your members on behalf of others?

The WITNESS: No, sir.

Hon. Mr. DUNNING: It does not include them?

The WITNESS: No, sir.

Mr. DUNNING: Can you give us any figure which would be somewhat of a guide as to the extent to which that is involved in your association?

The WITNESS: I have no information on the number of mortgages where the companies only hold them as trustees or agents.

Hon. Mr. DUNNING: Just to complete the record in that regard, the best information we have secured from the Dominion Bureau of Statistics as to the volume of estates, trust and agency funds of trust companies, many of which are of course members of the association represented by Mr. Leonard, as of December 31, 1937, is \$172,000,000.

Mr. COLDWELL: Have you anything from the 1931 census that would give us a guide as to the urban mortgages?

[Mr. P. D'Arcy Leonard.]

Hon. Mr. DUNNING: No.

Mr. COLDWELL: They were not included?

Hon. Mr. DUNNING: That is not included in the census information.

Mr. JAUQUES: What about the C.P.R.?

Hon. Mr. DUNNING: The C.P.R. would not be included. I have the figures for the Canadian Pacific Railway. The total of all accounts in the Canadian Pacific Railroad land account is \$40,000,000, made up of deferred payments on agreements for sale of \$37,000,000, and mortgages, \$3,000,000.

Mr. JAUQUES: They would come in under the scheme?

Hon. Mr. DUNNING: No. As the law is at present drafted it is rather difficult to see how they would qualify.

I admit there is a point there as to whether lending companies with large volumes of agreements for sale outstanding should not be brought within the scope of the measure. If that could be kept in mind for later consideration I would appreciate it.

Mr. JAUQUES: Do you not think they should be?

Hon. Mr. DUNNING: I would not say I think they should, but I think it is a point well worthy of further exploration.

Mr. JAUQUES: I think so too.

The WITNESS: Mr. Chairman, I think possible I should try to put more accurate information, if we can get it, before the committee on the number of mortgages. At the present time I am using these approximate figures which appear to me as accurate as I can speak of them now. But I was referring to the number of those mortgages to show the mechanical problem involved to the companies in making the adjustments under the bill at present; and I am not putting it too strongly or extravagantly to say that the mechanical problem alone might prevent the bill operating where otherwise it could operate.

On that account I would like to think that the suggestion which Mr. Dunning made might be put into operation in some way so that the mechanical problem could be overcome. The initial step in any adjustment should be that the company, the farmer or the city borrowers—and this is all subject to its being confined to where we think the problem exists, in the cities, as non-current mortgages—should get together and agree on their proposal and their adjustment, and that that agreement should contain a term that it was subject to the subsequent testing in any way that the central mortgage bank desired as to that adjustment being a fair one in accordance with the terms of the Act. We think we could then go right out and deal directly, quickly and expeditiously, and with the least mechanical difficulty. From the standpoint of the borrower, I think there is a great deal to be said for that procedure, otherwise either one is not able to do the job at all, or one does it only for a long period of time and with dissatisfaction generally as long as the matter is then left open.

So long as that could be the first step and then an appraisal or such other test as the mortgage bank might wish to make, as to the fairness of the adjustment, allowing whatever reasonable time, say, a year or so for that to be done; if the mortgage bank then felt that the adjustment was not a fair one it should be re-opened by virtue of this appraisal and then the procedure that is now set out in the bill could be followed.

Hon. Mr. DUNNING: In that regard you would intend in your suggestion that the borrower should get the benefit immediately?

The WITNESS: Yes.

HON. MR. DUNNING: The borrower should get the benefit immediately both of the adjustment tentatively agreed upon and of the lowered interest rate from this time forth?

THE WITNESS: That is right.

MR. PLAXTON: And of the extended term of years?

HON. MR. DUNNING: Yes, all the provisions. I wanted it to be made clear that you acknowledged that.

THE WITNESS: Yes, that that adjustment would then be put into effect and made in so far as the books of the company are concerned and the books of the central mortgage bank, the subject to be re-opened on the basis of the Central Mortgage Bank's subsequent appraisal, if it has an appraisal. Under those circumstances it seems to me that in a great many cases the appraisal might not be necessary. The books, plus the agreement as between the borrower and the mortgage company might be sufficient evidence in themselves without in every case an adjustment or an appraisal having to be made.

If, however, the bank decided that the matter had to be re-opened, then it would be re-opened and in the last analysis whatever decision was then reached would be in accordance with the terms of the bill as it now stands. That would overcome to a very great extent the mechanical problem, and, coupled with that, there goes the most important question of valuations.

Before a company can go before its board of directors and have them enter into a membership agreement it is necessarily essential that they must know what it is going to cost them. What it is going to cost them depends upon the valuations to be made under this plan. It is, of course, impossible to have those valuations made ahead of time, but there are certain basic standards or characteristics of securities which can be agreed upon or decided ahead of time.

Probably the biggest problem of valuation which exists today is in Saskatchewan farms. I think Dr. Donnelly might agree with that. It is a difficult matter to say just what is a fair valuation for the purposes of this bill, say, in the drought area of Saskatchewan. I think the general opinion among member companies is that there is a great recuperative power there and that today's conditions or valuations based on the last few years should not be the criterion for valuations under this bill. Therefore, there is, as I think Dr. Donnelly mentioned, some survey now being made in Saskatchewan. You have certain definite classifications of soils there. There is heavy clay soil and lighter soil, and particularly in southern Saskatchewan I think there is a real basis upon which valuations or standards of valuations per character of soil could be definitely decided upon before a company actually became a member of the central mortgage bank, so that it would know what the approximate cost would be. The same thing may be applicable in other areas or to other classifications.

The point I am desirous of making, though, is that if we are to come back to the premise that the bill to be successful must have a sufficient volume of business represented by its member companies and each company must know what it is going to cost before it can come in, then the matter of valuation is all important, and some criterion should be established as quickly as possible or agreed upon before the time for membership in the bank would be fixed.

Those are the major difficulties, and the suggestions that I am putting forward are put forward as constructive suggestions in the hope that if the government's intention is to do the job of adjusting the mortgage debts where the problem appears to us to rest, the co-operation necessary to the voluntary association through member companies could be facilitated by the removal of the difficulties that present themselves.

[Mr. P. D'Arcy Leonard.]

There is one other point that I was particularly desirous of mentioning, but Mr. Dunning has indicated the intention of the government to move an amendment dealing with the question of the interest rate for the control of future mortgage lending. There are companies whose position is not only very liquid at the present time but normally will continue to be so, and they may be the companies that could make a very important contribution to the adjustment of the existing mortgage debt situation but are not in any need of assistance, or, let me put it another way, it is not likely that they might be borrowing money in the future from the central mortgage bank and therefore there should not be the restriction as to the control in the future except in the case where a company comes in and obtains funds from the Central Mortgage Bank. Then it is perfectly proper that the terms and conditions including the interest rate, and so forth, that that company must charge, shall be subject to the control and direction of the central mortgage bank.

Mr. Chairman, I think that is all I have to present in the way of a general submission. There are details of a number of matters that probably at some other time or at the wish of the committee might be dealt with, such as the question of the term of the mortgage, whether twenty years, and so on. I might mention that twenty years in connection with the adjustment of existing mortgages appears to us to be subject to so many qualifications and exceptions that, instead of being the standard, as indicated by the bill, it should be a much lower time in so far as the general run of mortgages is concerned. There are matters like that about which one might desire to say something further, but as the committee has indicated they would like to hear some general discussions, I have confined myself to the matter of the general principles indicating the major difficulties that now present themselves to the companies in connection with the bill.

By Hon. Mr. Stevens:

Q. On the broad general scheme, Mr. Leonard, might I ask this question—and I do not wish you to specify names of companies because I am speaking in general terms—would it be likely that some companies have already achieved adjustments on a wide scale while other companies may be lagging behind in many adjustments, and would the bill as at present drafted, shall I say, constitute a sort of prejudice against those who have voluntarily made extensive adjustments and favour a company that, perhaps, has neglected making adjustments and would now come under the bill and secure the advantage?—A. Mr. Stevens, if that were the situation, there is no doubt the result would follow: that is, that to the extent that one company might have made more write-offs voluntarily under the same set of circumstances as another company that did not, then this bill would favour the company that had not made adjustments to that extent.

Q. Would you care to intimate whether or not such a situation exists?—A. As far as I know, I could not say—I would not like to express an opinion—for this reason, that notwithstanding there might be a set of figures which on the face of it might tend to bear out that that was the situation, there might be other circumstances as, for example, the value of the security. Now, take one set of mortgages here and you see a set of accounts and you see there is a larger volume of arrears of interest, and over a year there is another company with a lesser amount of arrears of interest. This company over here says they have written off, but what was the underlying security, what were the mortgagors like? Were these men over here in a position where their security was good. The mortgages originally were lower in amount to the companies carrying them on, and that is perfectly all right; were these too high over here. So, I do not think an opinion could be expressed; at least, I would not like to express an opinion.

Q. I have one or two other questions to ask. I gathered from your remarks that you take no objection to the farm adjustment feature of the bill?—A. What we say is this, that if the government has in mind the reduction of the rate of interest on farm mortgages to 5 per cent, thus writing down the amount to 80 per cent of value, we think that will be a real contribution to the agricultural industry, and to the extent that we can play a part in it, we are prepared to do what we can.

Q. And the same thing applies to that class of urban mortgagees who are in default?—A. I am speaking once again generally subject to the fact that each individual company must make its decision finally.

Q. What we are seeking now is to get the general reaction of the companies to this bill?—A. Yes.

Q. Then on the appraisal, I also gathered from your remarks you would be agreeable to the suggestion that Mr. Dunning, Minister of Finance, made a little while ago, that some machinery could be set up—I am talking about the practicability of it, if it is possible to set up some machinery which would permit of an adjustment before an individual appraisal is necessary?—A. Yes.

Q. You agree?—A. Yes.

Q. And under those circumstances you would remove considerable of your objection.—A. From the control standpoint, and from the method of procedure, if the mechanical end of it can be brought within practicability, then we get back to the question of the urban mortgages and the extent to which each company can take the loss involved, plus the valuation. I do not know whether I understood correctly, whether I answered according to what you had in mind, Mr. Dunning, when you said that the company would make the adjustment as soon as the agreement was made.

Hon. Mr. DUNNING: Perhaps I should clarify that—I mean, following Mr. Stevens thought—perhaps I should clarify there to this extent, that on poring over this problem of what might be called the mechanics, which I have sketched, first of all we attempted just to see the mechanical significance of the problem, and a point which I could not overcome was the fact that no matter what machinery was in position a very considerable length of time would be involved during which there would be a more or less uncertainty of relationship between the debtor and the creditor which I regard as unfair to both; and it was on the basis of the confusion which might result from that lengthy period of time that I evolved the suggestion that very probably we could meet it by arranging for an adjustment to be made as quickly as possible by the companies toward the borrowers but subject to final adjustment in accordance with the appraisal features of the bill. That is what I had in mind for overcoming that confusion of relationship over a lengthy period of time.

Hon. Mr. STEVENS: Yes, I follow the minister. Might I interject, I think this would be the place to do so, the experience under the Farmers' Creditors Arrangement Act has been rather trying in that respect. I understand that there are such a volume of applications before that organization now that working the way it is it would take them something like 40 years to deal with them.

Hon. Mr. DUNNING: No, I am sure that is quite wrong.

Hon. Mr. STEVENS: That is, carrying out the investigation principle. Well, we will not say how long it would take, but there are a tremendous number waiting action.

Hon. Mr. DUNNING: We will bring you information as to the number outstanding at the present time.

Hon. Mr. STEVENS: The point I am making is that I think we should take advantage of the breakdown there so as to see that a similar situation does not occur in connection with the administration of this Act.

[Mr. P. D'Arcy Leonard.]

Hon. Mr. DUNNING: With that I entirely agree.

Hon. Mr. STEVENS: I agree with the minister, and I agree on the rest of the question with Mr. Leonard that we should erect some machinery in this field so that when we come to the question of putting the Act into force it will be ready in such a way as to enable quick adjustment on a broad basis.

Hon. Mr. DUNNING: But subject to review.

Hon. Mr. STEVENS: But subject to review, although I think the review would take an interminable length of time under any individual appraisal system.

By Mr. Cleaver:

Q. Just a couple of questions to Mr. Leonard to clarify my understanding as to his two main objections to the bill. As I understand it, Mr. Leonard, your first main objection in regard to urban loans is founded on the fact that as to rural loans the mortgagor is dependent on the earning capacity of the actual mortgage security for his ability to pay, whereas in regard to urban loans the mortgagor is dependent upon outside sources for the ability to pay?—A. That is one of the difficulties I pointed out.

Q. Well, then, is your objection in regard to the current urban loans based on the fact that you realize that there are many loans now current upon which payments are made in which the mortgage would exceed the 80 per cent of the present day appraisal and that these mortgagors (notwithstanding the fact that the loans are actually in excess of what would be the 80 per cent appraisal) are still able to and are still keeping up their payments and you feel there is no urgent need to adjust those mortgages?—A. Yes. There are two points there, Mr. Cleaver. When we come to the case of the current loans the first, and perhaps more important than the point that you raise, is the interest rate, the average interest rate on the good mortgages. The average interest rate on the good mortgages during the last two years throughout Canada has been higher than 5 per cent.

Q. What rate?—A. That again varies, but I would say that city mortgages will run at an average rate of $5\frac{1}{2}$ per cent up to possibly $6\frac{1}{2}$ per cent.

Q. So that you would say under the act as it now stands the loan companies would be taking a needless loss with respect to both interest rates and with respect to write-offs between the present amount of the mortgage and the 80 per cent appraised value of the property?—A. That is right, when the ability to pay is there in those cases and when the company, if it were to have to give the write-off, is giving up an asset and thereby reducing its power to make compensation where real need exists.

Q. Therefore the act should be confined, in so far as it applies to urban loans, to needy borrowers?—A. To non-current loans.

Q. Non-current loans?

Hon. Mr. DUNNING: That is it.

By Mr. Cleaver:

Q. But certainly in regard to needy borrowers?—A. One of the big difficulties is, of course, once again your mortgagor, probably. If you have to deal with individual borrowers on an individual basis in accordance with need, then once again you are up against a simply insuperable proposition. You must try to analyse where the problem exists so that it can be dealt with in a general way.

Q. Speaking from the point of view of the loan companies, the loan companies cannot find other purchasers of farms, but could find other purchasers for the urban property?—A. I do not think that is a fair way of putting it, Mr. Cleaver. I would simply lay the difference on this basis; that if you propose to deal as this bill proposes, with the adjustment of both farm mortgage

debts and urban debts on a basis of relying upon the ability of companies to come in and make write-offs, then there is not only a need from the farm mortgage situation, but I think a justification on the same basis that companies in the past have in a general way made a general farm adjustment. Now, the companies are not seeking this legislation. If the companies could have their way, they are prepared to take the losses represented by normal investment risks; where they have loaned too much they must take the loss. But where their ability to deal with their individual borrowers and to adjust their mortgage in accordance with the situation of the case, having in mind their knowledge or their ability, where that relationship is prevented because governments are of the opinion that there is a general situation which requires some general action, where the ability of the company to deal with its borrowers in an individual way is prevented, then from that general standpoint, treating this as an indication, if it is dependent upon the companies coming in, it must be consistent with their ability to deal with that general situation.

Q. Well, then, let us come to the other main objection that the companies have to the bill in the present form; that is, in regard to the interest rates on mortgages. I take it that 2 per cent spread is not sufficient for operating expenses and profit return?—A. Dealing with the section imposing the maximum rate of interest as 2 per cent above the Dominion of Canada rate, our experience would indicate that there has been in the past a higher average rate, taking farm and city and spread throughout the country. You could not operate in many places on less than that spread. We are not making any representation so far as it is concerned; because so long as it is confined to the companies or to the borrowings companies make, then, of course, that is a matter that can be dealt with at that time.

Q. I am coming to that. But I did want your opinion, Mr. Leonard—if you are in a position to give it to us—as to what spread you believe the companies require between what the money costs then and what they let it out for, for management and operating expenses and profit?—A. Our answer to that is this, that it varies per mortgage, per district, throughout the whole of Canada.

Q. But the law of averages is working all the time. Let us have the mean average?—A. There are some figures that have been made available on the question of spread. The one that runs in my mind at the moment is a comparison that was made in connection with the brief that this association filed before the Rowell commission, where there was set out the Dominion of Canada bond interest rates running over a period since 1919 and the average mortgage interest rates of one company selected as being as near as one could get to a typical situation; and the spread as between the Dominion of Canada bonds and the average rate would vary under 2 per cent and over 2 per cent; but on the whole and in the course of a number of years, over 2 per cent. That is a spread as between an average rate of interest, not a maximum rate of interest, and the Dominion of Canada bonds.

Q. But you would not be obtaining your money for loaning purposes at Dominion government rates in those years. You would have to be paying a greater per cent than the Dominion of Canada rates to obtain your funds for loaning?—A. It runs in my mind—and I speak subject to correction, although I do not think I am very far off—that the average cost of this particular company's borrowings over the same period was .17 higher.

Hon. Mr. DUNNING: Perhaps I could help Mr. Leonard by referring to his own evidence before the special committee on housing in 1935, where he gives the operating cost, as distinct from the interest cost, at 1.4 and the spread at 1.74. You will find that, Mr. Leonard, in your evidence before the housing committee on page 339 and 340 of the minutes of the proceedings of that special committee on Thursday, April 4, 1935. There was considerable questioning about

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it; but the net result of it, as I gather it, was: operating over cost and above the interest cost of money to the company of 1·4 and an actual spread between the loaning rates and the cost of money plus cost of operation of about 1·74. I would not hold you to that.

THE WITNESS: It runs in my mind, too, that the figures I was quoting there were figures taken from the report of the Registrar of Loans and Trust Corporations for Ontario.

HON. MR. DUNNING: That is right.

THE WITNESS: What those figures represent is this—that is, taking the report of the Registrar of Ontario—and that report deals with Ontario incorporated companies, plus companies doing business in Ontario and relates to dominion-wide business of those companies—that figure of 1·4 represents all the expenses of the company applied against all their assets.

HON. MR. DUNNING: That is right.

THE WITNESS: And 1·74 represents an average spread between their revenues on their assets and their expenditures for interest on their debentures and deposits.

HON. MR. DUNNING: That is right. I should make it clear that I am not wanting to distort the figures, but 1·74 includes, of course, the 1·4.

THE WITNESS: Yes, it must.

MR. CLEAVER: 1·74 is plus profit.

THE WITNESS: No, there is no question of profit or loss in those figures.

MR. TUCKER: Is that in the case of urban and rural business?

HON. MR. DUNNING: Dominion-wide business.

MR. TUCKER: It applies to both?

THE WITNESS: It cost more for the rural.

HON. MR. DUNNING: I think your figure here, Mr. Leonard, is general.

THE WITNESS: Oh, yes, it is general; it is not related to mortgages alone. It is the figure that takes all the assets of the company. Let us assume that the loan and trust companies had assets of all kinds, bonds, and so forth, of \$200,000,000, then the 1·4 would represent all the costs of doing business on that \$200,000,000.

HON. MR. DUNNING: That is right.

THE WITNESS: That is the total cost of doing business not related particularly to mortgage costs.

HON. MR. DUNNING: But it would be very largely.

THE WITNESS: I think you would probably find 75 per cent—

HON. MR. DUNNING: More than that.

THE WITNESS: I would not like to say.

HON. MR. DUNNING: It does not cost much to administer a bunch of bonds in a vault.

THE WITNESS: No.

MR. CLEAVER: I wonder, Mr. Leonard, if we could obtain a fair percentage viewing the problem from another standpoint and taking a company with which you are very familiar, the Canada Permanent Mortgage Company. What percentage of its loans would be loans through capital invested by the shareholders and what percentage from borrowings?

THE WITNESS: I do know that I am the proper person to speak as to that particular company.

MR. CLEAVER: If you have not the figure in your head I would be content to wait for it, but I think it would be an interesting thing to know, because, in

determining the correct percentage for profit purposes, we should only consider the actual capitalization of the company, we should not consider the borrowed capital of the company. They do not pay dividends on borrowed capital, they pay dividends on actual capitalization.

The WITNESS: What they pay on their borrowed money is their costs.

Mr. CLEAVER: The interest?

The WITNESS: That is right.

Mr. CLEAVER: Then are you prepared now to give this committee your opinion as to what spread the loan companies require in order to pay their operating expenses plus a fair profit return?

The WITNESS: I do not think one can generalize on that. It differs by way of location. In one particular company the variation of cost per location will be very considerable. Then take again, for example, the question of the size of the mortgage accounts. It takes five times as much book-keeping to handle five \$2,000 mortgages—

Mr. CLEAVER: Well, if this Act is to be fair we must have some concrete evidence in that regard.

The WITNESS: Yes.

Mr. CLEAVER: I would ask, Mr. Chairman, that Mr. Leonard furnish us with some information in that regard. I have just one more question to ask, if I may, Mr. Chairman, in regard to the interest spread. Is there anything in the present Act which compulsorily fixes the interest rate which the loan companies may charge with respect to future mortgages if a company does not take advantage of the borrowing sections of this Act.

The WITNESS: With all due respect to your own legal opinion, Mr. Cleaver, I think there is; that in order to become a member you—

Mr. CLEAVER: Well, if a company does not take advantage of the borrowing provisions of the Act, what section is there which restricts their interest rate on new loans?

The WITNESS: The sections that would have to be amended, so far as I see it, to make it clear are sections 16 (h), 16 (i) and section 20, sub-section 1.

The CHAIRMAN: Gentlemen, shall we adjourn until 4 o'clock this afternoon?

Some Hon. MEMBERS: Yes.

(At 1 p.m. the committee adjourned to meet again at 4 p.m. this afternoon.)

AFTERNOON SESSION

The committee resumed at 4 o'clock.

The CHAIRMAN: Order, gentlemen. Mr. Cleaver, you had the floor at adjournment.

By Mr. Cleaver:

Q. Mr. Leonard, at adjournment I was directing a few questions to you as to what the loan company people require for operating expenses and for profit. Have you had an opportunity in the noon hour to think over the matter, and to look up a typical case?—A. I have not, Mr. Cleaver, to the extent that I can give you an answer.

Q. Perhaps, Mr. Chairman, it would be just as well to leave that point and let Mr. Leonard have time to come forward with a typical statement. I am not saying that any names of companies should be disclosed, but I would like you to choose the company which has both urban and farm loans?—A. I was going to suggest, Mr. Cleaver, having thought the matter over, that I foresee difficulty

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in arriving at any information which would enable the committee to decide as to whether this two per cent is a right figure or whether or not the other figures, as between a national rate of interest and the rate of interest of the Dominion of Canada bonds—

Q. No, I was not approaching the problem from that standpoint. My latter questions were directed in an effort to ascertain the loan companies' viewpoint as to what spread they require between the cost of their money on the one hand and the interest return on the other, in order to show them a legitimate return over the cost of money plus operating, plus profits; and in that statement I would ask you, if you would be good enough, to segregate the items and give us one estimate with respect to the item for losses, and also an estimate for profits.—A. I would be very glad to get such information as is available along that line. There is never, so far as I know, in the making of an ordinary mortgage contract any specific provision for risk of loss or for profit. It is not like, for example, under the federal housing administration in the United States.

Q. No, but you will find this, Mr. Leonard, if you will go over the statements of the loan companies for the last ten years—you will find that all of them have put up very heavy losses and made a big reduction in their reserves, and I think we realize the necessity for that because we have been living in most extraordinary times. Just for example, I checked up the figures in connection with one company, and that company with a capitalization of \$12,000,000 borrowed capital of about \$17,000,000, and it would only take .145 per cent of interest to show a 6 per cent return on both capital and reserves.

Hon. Mr. DUNNING: That would have to be the net return.

Mr. CLEAVER: Oh, yes, quite.

By Mr. Cleaver:

Q. Well then, coming back to the other point if I may, with regard to the objection of the loan companies to the inclusion of urban mortgages under the Act, let me first get clear what you mean by the mortgage that is in default. I believe your suggestion this morning was that if the Act were made to apply simply to mortgages in default it would be satisfactory to the loan companies, or more satisfactory to the loan companies, than in its present form; what do you mean by mortgages in default?—A. That was not the phrase I used. I spoke of non-current mortgages.

Q. What do you mean by non-current mortgages?—A. I mean mortgages where the full amount of the principal has matured and has not been renewed, is over-due and outstanding.

Q. Over-due as to principal?—A. Over-due as to principal.

Q. Then you were not speaking of mortgages which were simply over-due as to interest?—A. No.

Q. Well then, as to the mortgages which are over-due as to principal; do you not find with existing provincial moratoria that perhaps some people are taking unfair advantage of the loan companies and that some of the deferred mortgages are perhaps not as deserving cases as some that kept their mortgages properly renewed?—A. There are some cases of that character.

Q. I wonder if it would be possible for the committee to have from you an analysis that would give us some idea of what these deferred mortgages are; and as to what percentage they bear to the total of your urban mortgages?—A. You would appreciate, Mr. Cleaver, that time is a factor in getting any of this information.

Q. What do you say to this suggestion: might it not be argued that we were penalizing thrift if we simply allowed this Act to function in favour of deferred mortgages? Mind you. I am not criticizing your suggestion; I am just trying to explore all the different avenues that open up as a result of that suggestion.

Hon. Mr. DUNNING: I wonder if you would permit me to develop that for a moment. I would say quite frankly, Mr. Leonard, because great numbers of people write to me about these matters—I realize of course that from the standpoint of the mortgagee, the mortgage company, the man who has his mortgage in good shape is a good fellow. I mean, the means of judging him is by the manner in which he keeps his contract. As soon as it became known to some of the press that one of the objections of the mortgage companies was to including within the scope of this law those whose mortgages were in good standing, I have had this kind of communication, which impresses me very much, from people who say they have skimmed, saved and denied themselves other things in order to keep up their payments, and point to actual cases of others who have not done so and who have sheltered behind provincial mortatoria, and this proposition is put to me: Mr. Dunning, if you put through legislation of this character suggested by the mortgage companies you are putting a premium upon those who have made no effort and are penalizing those who have made every effort to keep up payments. Now, frankly, I have not found an answer to that. Have you got one?

The WITNESS: I am afraid I haven't either, Mr. Dunning. I think there is not any panacea that will cover every particular case. And the most that we can say—

Hon. Mr. DUNNING: I am impressed with the generality of that type of complaint, that sort of communication.

The WITNESS: It would appear to us from our study of the situation that there would be a great many more in the urban mortgage situation who would derive something in the nature of a bonus to which they were not entitled under any ordinary conditions through the assistance of federal credit; a great many more of that type and character than those who might fall into the category that you mention who have kept their accounts in good standing at a considerable amount of sacrifice on their part. If the problem contained the same general aspect as, we will say, the farm credit problem appears to us to do, then there might be justification for departing from the ordinary principle of helping a man who can pay to live up to his contract when he is able to do so and dealing with the matter of a purely individual basis, because the general situation is so wide and so great that the only practical way to attempt to deal with it would be to sacrifice the other end of it.

Hon. Mr. CAHAN: Might I ask a question in that connection?

The CHAIRMAN: Yes, Mr. Cahan.

By Hon. Mr. Cahan:

Q. Do you see any solid reason why a mortgage should be differentiated from any other indebtedness to the extent that a man should pay his debts according to his ability to pay?—A. It is hard to disagree with your general principle, Mr. Cahan. I think that the only exceptions must be found in such situations as clearly I think are there in connection with the farm situation.

Q. Take the farm situation, with which you are more familiar than I. Are there not many instances in which the farmer who is the mortgagor of his farm property has other assets realizable with which he might perform his obligations according to the contract outside of the provisions of a bill such as this?—A. That is quite right, sir. I think you have the choice between two alternatives, the one is the operation of some individual treatment either as between the debtor and the creditor or through the operation of some machinery such as the Farmers' Creditors Arrangement Act. If the individual contract can take care of your problem then it is the preferable one. On the other hand if your individual treatment must bog down because of the generality of your problem, because of the number of cases and the extent of the situation, then there are

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occasions when it may be necessary to sacrifice that sound initial principle in order to arrive at the necessary conclusion. I would like to instance, for example, in that connection southern Saskatchewan. I do not think there is anybody who could reach any other conclusion than that there was a situation there of such a general character for which the people were not responsible that it cannot be dealt with on any other basis but some general plan.

Q. I quite agree, but going into the matter with some care and an appreciation or evaluation or appraisal of the real property of which the farm consists being the only basis on which a reduction is to be made, the fact is that the property may have depreciated but the money obtained on mortgage may have been used for other purposes, for equipment, for the purchase of cattle and horses, and for many other things except merely the improvement of the real estate. So long as the farmer has clearly the ability to pay, do you not think that to relieve him of his mortgage indebtedness would create a lack of confidence not only in the present but in the future on the part of your companies and the part of any other lender that is asked to lend on farm property?—A. I think that there is so much force in what you say that I can only repeat once again, where the general problem seems to be the greatest, there seems to be, to me at any rate, and I think those that I represent, difficulty in choosing an alternative. The justification for the general plan is to be found in what appears to be the nearest thing to a practical solution of it, and I would qualify that, for example, by saying that if the general situation in farm mortgages was comparable to the urban mortgage situation I believe I would agree with you. There is in connection with the farm mortgages and farm debts the Farmers' Creditors Arrangement Act now operating, and it will still continue to operate so far as other debts are concerned in the three provinces where the problem of the debt situation is the gravest. In the other provinces there is not as severe a problem; possibly the necessity of dealing with the matter generally brings them into the whole picture.

Q. I quite agree with regard to the distinction between farm and urban property. I have a case in mind now, but is a case that exceeds the amount of \$7,000. I know a man who was very well to do who purchased a property for \$150,000 not so many years ago and he paid for it by placing a mortgage of \$100,000 on the property and paying off \$50,000 in cash. To-day that man, simply because he wishes to keep his engagement, has paid off the whole of the price of the property and all of the loan on the property. To-day, under the valuations which are current, that property is not to be valued at more than \$35,000 to \$40,000, so great has been the depreciation. But are not men in farming districts as well as those in urban districts bound to assume a certain liability in respect of annual income from or the annual value of their property to the extent of paying their debts according to the ability to pay? I quite agree with you in regard to lower Saskatchewan where men have been wiped out. It is like a fire wiping out a large part of a city or like a flood wiping out a large agricultural district along the valley of some river. These are matters which parliament should take into consideration and grant some relief in order that tillage may go on after the flood has subsided or in order that homes may be rebuilt after the devastation by fire. But, for the life of me I cannot understand why even in these depressed times, a man who has available assets which may be liquidated should not pay the engagement which he has undertaken, whether that of an ordinary debt or a mortgage debt. I cannot conceive any difference between a mortgage debt and a specific debt, a note of hand, a promissory note discounted in the bank. Unless men are expected to pay their engagements, their indebtedness, why you destroy all confidence in credit which permeates every phase of business from one end of the country to the other, and to destroy that, paralyses, it seems to me, business and trade.

By Mr. Cleaver:

Q. Just on that point, a bankruptcy test similar to the bankruptcy test under the Farmers' Creditors Arrangement Act would appear to meet that point, would it not? That is, no one would be entitled to the benefit of this act unless he could show he was unable to pay his debts in full.—A. That would bring it back to an individual basis.

Q. And would bring it back so that only needy mortgagors would have the benefit of the act. I should like to refer to the point I was examining you on. After reading the sections to which you gave me a reference this morning, it occurred to me that there might be some other reasons why the loan companies are opposed to the urban part of this act. I have been wondering as to whether it might not be on account of the length of time on which loan companies can borrow money? What is the length of time on which loan companies can borrow money?—A. I think the maximum restriction under the Dominion Loan Companies Act is ten years.

Q. Would the act be more satisfactory for the loan companies if it should be set up on the basis of a twenty year payment, that is, the payment amortizes for twenty years, but the balance of the loan to be due and subject to the new arrangement at the end of ten years?—A. That I think would be much more satisfactory from the standpoint of the loaning institutions, although—

Q. That is, it would not affect the amount of the monthly payments of the mortgagor but it would protect the loan companies as against an anticipated rise in the interest rate at the end of their first operating period.—A. That is quite right. I should not like to be taken as agreeing with what should be the case, that it should be a twenty year amortization basis and have a ten year term as the present National Housing Act. That would be preferable to the way the bill reads now so far as the bill might indicate that twenty years should be the standard term; but I should like to make this statement: possibly it might be unwise to standardize too much in the bill, having in mind that the length of time and the amount of amortization depends so much on the amount owing on the mortgage, the age of the property and other circumstances. Certainly a twenty year amortization and a ten year period is preferable to twenty year amortization and a twenty year period.

Q. Then, coming to the age of the property, which brings up another point that has been running through my mind. What about your loans on frame houses that are not built on masonry foundations? Would you not then be required to have a still further reduction in the due rate as to principal?—A. Well, I am not a mortgage loaning man and I cannot speak as to particular classifications.

By Hon. Mr. Dunning:

Q. May I just follow with one question bearing upon Mr. Cahan's line of questioning, because I regard that as very important indeed. In your replies to Mr. Cahan, Mr. Leonard, you indicated what I think everyone here believes, that the test of ability to pay is the real test in respect to all obligations that all of us have. But you indicated that conditions might be so general as to render impractical the application of that principle. Well, now, in this connection have you not had experience over the last ten years of the application of the general rather than the particular, for all of the provinces of Canada through their actions of a moratoria character?—A. All but one province.

Q. All but one province, and that condition has existed and is of general application in respect to all but one province at the present time?—A. Quite; in some type or form, I think that is right, sir.

Q. Would I be saying too much if I said your members would regard the future of their business as very much more sound if you could get away from that type of limitation?—A. Undoubtedly, sir.

[Mr. P. D'Arcy Leonard.]

By Hon. Mr. Cahan:

Q. I suppose you cannot give us a percentage for all of Canada, as it must be very different in different provinces? But take urban cities like Montreal or Toronto, there must be some percentage that might be fairly easily estimated of the total mortgages outstanding which are not serviced from year to year by the payments of the mortgagors. It is not general; there is no general collapse on the part of mortgagors in urban centres such as those, is there?—A. The nearest information that I think we can come to on that point is the report that runs in my mind of the registrar of loan corporations which was issued several years ago.

By Hon. Mr. Dunning:

Q. Of Ontario?—A. Of Ontario. There was a questionnaire sent out to institutions to find out how much of the interest due in the year was paid, and the average figure for the year 1936 of collections, payments on the amount of interest, that fell due in that year for all institutions was 85 per cent. I may be out in my decimal points, but that is what runs in my mind, and that would represent a volume of business that would be predominantly urban. Then, there would be a higher percentage paid on urban mortgages than on farm mortgages.

By Hon. Mr. Cahan:

Q. Before this bill was even announced, before there was any discussion about it, before I had ever heard of the intention of the government to introduce it, in conversation with one of the higher officials of a large insurance company, he told me offhand—perhaps he had not sufficiently looked into it—that less than 10 per cent of the principal sum of the mortgages outstanding in favour of the company were either in default or suspected as likely to go into default. Is that a high estimate?—A. That might not only be true of that particular company, there might be individual companies with a better position than that. There will be other companies whose position will not be as good. I was just trying to come to the nearest that I could to an average picture, which must be built up of your extremes, and of course the better the classification of the mortgages of a company, the less likelihood of its coming here, unless the plan is something that it can justify to its shareholders or debenture holders or policy holders.

Q. Now, with regard to mortgages on real property, that is farm property, which of course necessarily is in rural districts. Take a province like Ontario. There must be a great deal of difference between the volume of the annual default in a province like Ontario and the annual default of principal or interest in recent years in a province such as Saskatchewan?—A. Yes.

Q. I can quite understand, as the Minister of Finance suggests, a large percentage of default has occurred in southern Saskatchewan in view of conditions which prevailed there and which we all believe to be most distressing; but in a province like Ontario, can you give any information as to what percentage of the volume of mortgages outstanding are in default or in respect to which the security is so doubtful that they are rendered suspicious?—A. No, I have not any information on that as related to the farm mortgages in Ontario.

Q. Is there any way of which you have knowledge by which we could obtain definite information in that respect?—A. Yes. I think we could, Mr. Cahan. I should like to explain that in speaking on behalf of the institutions, we are not trying to deal with this matter on the basis of whether it should or should not be done. It is simply that, in so far as the bill, if passed, depends

upon individual companies joining a Central Mortgage Bank and doing certain things, on behalf of them I am pointing out to the government and to this committee what difficulties there may be in the way of membership in that bank. In so far as the Ontario farm mortgage situation is concerned—I am speaking generally, just from my general knowledge—from the time that the Farmers' government in Ontario created the Agricultural Development Board and loaned somewhere, I think, about \$55,000,000—not that government, but the loans altogether ran up to about \$55,000,000—the business of the board resulted in really a driving of the institutions to a great extent out of the farm mortgage business in Ontario. There is still a volume of business, but it is not of such a large proportion in the general picture, largely because of that situation.

Q. Is there any situation in Ontario which the companies in your association may not satisfactorily adjust on particular personal applications being made for that purpose? Do you require government credit in order to make such adjustments?—A. I do not think that the matter of individual adjustment by the companies per individual case can be put at all on the basis that they require assistance per individual case.

Mr. WARD: Mr. Chairman, I should like to refer to a question which Mr. Cahan asked a few minutes ago. I think something should be said on it; I think we should get it very clearly in our minds. Mr. Cahan asked a question as to whether we should differentiate between money loaned on mortgage security and money loaned on, say, just the moral risk—take, for example, a bank loan. It does seem to me that there is clearly and definitely a difference. If I have money to loan, and I loan it on, say, on farm security, I take a mortgage on the farm. I have a definite, tangible security. I become a partner, do I not, with the mortgagor? And to that extent, it seems to me that we must, in order to justify this legislation, clearly differentiate between the two, and decide that there is a difference. To my mind, as I say, the difference is very clear and definite, that the mortgagee does become a partner with the mortgagor when money is loaned on farm security. I have in mind many, many examples. Mr. Cahan gave one, I presume, that occurred in Montreal. I have in mind one of many that have come to my notice. It is a case where a man had paid \$15,675 on a farm. I hold the receipts in my own office in Dauphin. There was an appraisal. I questioned the mortgagees's moral right to insist upon further payments, and there was still \$5,750 against this farm. I insisted so long and so persistently that the mortgagee said, "Well, we will have this farm appraised." They called in very competent appraisers of three different mortgage companies, and the maximum valuation placed on the land was \$4,200. The man had paid \$15,675 on the mortgage and there was still \$5,750 owing. What would you do in a case of that kind?

Mr. LANDERYOU: There are thousands of cases like that; yes, tens of thousands.

Mr. WARD: I merely point out that the man who loans out money must, by every moral reasoning, become a partner with the borrower.

Mr. CLEAVER: If he was a partner, he would share in the profits.

Mr. LANDERYOU: There were not any profits.

The CHAIRMAN: Order.

Mr. WARD: The reason I rose, Mr. Chairman, was to point out that, in order to justify this legislation, it seems to me we must clearly differentiate and decide that there is a difference between money loaned on moral risk and money loaned on definite tangible security such as a farm.

Hon. Mr. CAHAN: I have knowledge of definite, tangible securities on which I have obtained loans which depreciated very sadly in value in recent years. However, there is another question I should like to ask the witness.

[Mr. P. D'Arcy Leonard.]

By Hon. Mr. Cahan:

Q. Mr. Leonard, have you had any experience in connection with any single company which has been placing out loans on farm property?—A. I have only acted as solicitor.

Q. As solicitor?—A. Yes.

Q. That is my only experience. But in all those cases—as in my younger days—did not the character and the personality and what I might call the moral history of the mortgagor enter into the consideration as to the amount of the loan which would be given to him, no matter what the value of his farm was?—A. That is quite true. I still think that that is one of the most important factors, and should still remain one of the most important factors in the question of mortgage lending. While I do not know that the last speaker was asking me any question, I should not like to be taken as agreeing with either of his propositions, either that the mortgagee should rely upon that security and not upon the covenant or that he is in partnership with the mortgagor. The character of the borrower, from the standpoint of the borrower, always remains important, I think.

By Mr. Maybank:

Q. Did you ever see figured out, from any responsible source at all the percentage that will be usually loaned on character and the percentage that will be loaned on the other part of the mortgage?—A. No. It is not capable of calculation.

By Mr. Tucker:

Q. Is it not true that in some provinces there is no longer a personal covenant when a mortgage is taken?—A. New mortgages?

Q. Yes, on new mortgages.—A. Most of the mortgages that are in existence were originally made on the basis of the covenant being applicable.

Q. Yes, but I mean the mortgages that you have there now. For example, in the province of Saskatchewan, you hold your security only on the land; you do not hold a personal covenant at all.—A. No, I do not think that is quite right, Mr. Tucker. Is it not the case that that only applies to agreements for sale? As to mortgages, the covenant is still there on new mortgages.

Q. I think you will find that if you foreclose in the province of Saskatchewan you cannot enforce your covenant.—A. You mean that you have to get permission from the Debt Adjustment Board?

Q. No. There is new legislation there under which there is no right to enforce the personal covenant. I am sure of that.

Mr. MAYBANK: That is another matter.

The CHAIRMAN: Order.

By Hon. Mr. Dunning:

Q. In any event, Mr. Leonard, is it not the fact that whether the personal covenant is or is not in new mortgages will be as a result of legislation by any province?—A. That is quite right.

Q. And not by reason of anything we may do here?—A. Quite right.

Hon. Mr. CAHAN: Quite so.

By Mr. Tucker:

Q. What I am getting at is that, after all—bearing out what Mr. Ward says as far as mortgages are concerned, at least in the west—the only thing that has ever been considered by mortgage companies that I know of has been whether the security was ample or not?—A. I should not like to be taken as admitting that.

An Hon. MEMBER: Oh, no.

The CHAIRMAN: Order.

By Mr. Tucker:

Q. If it is sound to have a limit of 7 per cent on bank lending, would it not be perfectly sound and proper to have a limit of, say, 5 per cent, on mortgage lending and have that made statutory?—A. History shows that the result of setting a maximum rate of interest means that where that maximum is an economic rate, it works all right. If it is an uneconomic rate, then it only prevents loaning being done or loans being made, with the result that boot-legging, one might almost call it, of loaning starts in at rates, in some way by devices, higher than your maximum rate. In so far as the institutions that I represent are concerned, that shuts them out. Take your 5 per cent for example. There are places in Canada where, at the present time, not only is 5 per cent perfectly all right; it is, in fact, the prevailing rate, and there are even loans being made at possibly less than 5 per cent. But setting that as a maximum rate for Canada would concentrate your loans, your legitimate loans, in this area where it can be economically done and would deprive other places, shall we say, like northern Ontario, Peace River and other places, from any funds at that rate. The result would be, as it has been in other places. There are still private lenders who are always in the market; and by some means or other they would be lending. One of the prevailing methods has always been the question of discounts or secondary transactions. It has been the history over a hundred years.

Hon. Mr. STEVENS: Mr. Leonard, you have touched on something that I intended at some stage of the game to speak about.

Mr. THORSON: Louder, Mr. Speaker, please.

By Hon. Mr. Stevens:

Q. Would the establishment of a maximum rate, we will say of 5 per cent, tend to drive, we will say, your class of company out of certain territories or areas?—A. Undoubtedly.

Q. Would you agree that if you were driven out of those areas, there still being private money lenders' funds available, the tendency would be for the rates in those areas to rise higher than they are at the present time?—A. I think that would be a logical result.

By Mr. Donnelly:

Q. Could we not control it by saying that the rate of interest on farm mortgages should not be more than 5 per cent?—A. Dr. Donnelly, that is the point I was trying to make as to what happens when it is attempted to do that. There is the history going over a hundred years in England. They set maximum rates of interest for different contracts, and what resulted? By some means or other, if it was an uneconomic rate—if you set it at 5 per cent and try to make money, as you say of water running up hill, it just will not happen.

Hon. Mr. DUNNING: We are not trying to do that with this legislation.

The WITNESS: I was not suggesting that. I was just answering the question I was being asked.

Hon. Mr. DUNNING: Five per cent is being fixed for adjustments on existing mortgages.

By Mr. Donnelly:

Q. If by this legislation we do control in certain districts the rate on farm mortgages at 5 per cent, then is it not right and fair that we should say in the same districts that private loans should not receive more than 5 per cent?—A. Perhaps I should refer to what Mr. Dunning has just said, that in so far as this bill is concerned, the 5 per cent rate is a rate that is being fixed for

[Mr. P. D'Arcy Leonard.]

adjustments on existing mortgages. It is not a rate that is being fixed for future mortgages.

Hon. Mr. DUNNING: That is right.

The WITNESS: There is in the bill provision as to the rate of interest on future mortgages, on a basis—

Hon. Mr. DUNNING: Of spread.

The WITNESS: Of spread as between Dominion of Canada bonds and the mortgage rate which, if the bill went through in its present form, would be applicable to both farm mortgages and to non-farm mortgages, but which would have the result that I have said, because it is an uneconomic rate; it would concentrate in mortgage lending in those localities. But if that question of spread, of maximum rate of interest determined by spread, was confined to say future borrowings, then the result of that would be that those future borrowings from the Central Mortgage Bank would only go out at a certain rate of interest represented by that maximum spread; and in so far as my opinion goes, I think that 2 per cent is too small a maximum spread.

By Mr. Maybank:

Q. In connection with the particular section you are now referring to, have you estimated what the rate would be?—A. At the present time, for example, I think it is about 3·1 per cent as basis.

Hon. Mr. DUNNING: At the present time it would be around 5 per cent.

The WITNESS: What would no doubt happen is that by taking the Dominion of Canada bond rate, you cannot lend money at 5·1 or 5·2; it would be 5 per cent.

By Hon. Mr. Cahan:

Q. Would not the fixing of a rate, whether you fixed it at 5 per cent or 6 per cent, tend to prevent rural development in all the undeveloped parts of Canada?—A. The fixing of an uneconomical rate would have that result.

By Mr. Maybank:

Q. Is not this what would happen: Take a certain company, the XYZ Company which comes into this scheme. One of the arrangements it enters into is that it will not lend money in the future except, we shall say for the moment, at 5 per cent. We will suppose that is the rate. Would you not say that this would result in the XYZ Company thereafter confining its operations to certain well selected districts?—A. That would be the natural result.

Q. Then would not the next step be for the same company to have a subsidiary company which would not be in the scheme at all lending in these other less well selected districts at 5 per cent plus?

Hon. Mr. CAHAN: But that is not—

The CHAIRMAN: Order; let Mr. Maybank finish.

By Mr. Maybank:

Q. Is that not what would happen?—A. No, it would not happen, sir, for this reason; that in so far as our institutions are concerned they cannot control subsidiary companies except on a basis that a loaning company may have the stock of a trust company. We are all subject to government supervision and control.

Q. All right. It would not occur that way, we shall say. Mr. Cahan has indicated that there would be something in the nature of a trick involved. Well, whatever it is, would not this happen, that whereas the XYZ Company would only be lending in certain districts there would be plenty of other mortgage companies which would not be in the scheme at all?—A. Yes.

Q. —which would take up these others?—A. That is right.

Q. We would have two classes of mortgage companies, one that dealt with blue ribbon land and one that dealt with less than blue ribbon land.—A. That would be the natural result. Of course, I do think this, that on the basis of the bill standing as it is, I do not think that there can be sufficient volume of business represented by the potential membership as long as that curtailment on future lending is in the bill.

By Mr. Tucker:

Q. Supposing we, by virtue of our power to legislate in regard to interest decide that, in view of the fact that we have cut down the interest on bank deposits from 3 to 1½ per cent and cut the rate which the banks are allowed to charge from 7 to 6 per cent and that we would also cut the rate that shall be charged in regard to all securities to 5 per cent; that your companies, in order to put out the money they want to put out will not be able simply to say, "We won't do business in these particular areas," but will have to go out and do business as they have done? If they decide to curtail their activities by not doing the work they are permitted by law to do, they may be incurring the possibility of further legislation in regard to the matter? In other words, do you not think when you have certain rights under the law that you also have certain obligations? I put that question to you quite seriously because, so far as I am concerned, I think the mortgages at high interest rates which were supposed to have done so much to benefit the western farmers have in the long run done more harm than good.—A. Mr. Tucker, you are entering into a pretty broad discussion. After all, what the interest rate was on mortgages in western Canada was only a reflection of what interest rates were generally throughout the whole of Canada. I paid an interest rate on my mortgage on my house in Toronto that was comparable to the interest rate in western Canada.

Q. What was it?—A. 7 per cent.

Q. The rates charged by many mortgage companies in the west ran from 10 to as high as 12 per cent.—A. If you want to stick to a case of real comparison, comparing things that are comparable, you will find, as I say, that considering the expenditure of doing business, the character of the security in, say, the city of Toronto, where you have a concentration of lending and a volume, and comparing that with the same company lending money in Saskatchewan and its expense of doing business out there, the rates are comparable. Again, they compare with what the Dominion of Canada was paying on its own bonds. In so far as interest rates coming down on Dominion of Canada bonds and on deposits, they have also been coming down on mortgages, and they have been coming down consistent with the ability of the companies to do that. For example, companies also have term contracts; loan companies and trust companies have borrowed money and are still paying 5 to 5½ per cent on their term contracts now. It all comes back to a question of ability and of discharge of their duties and obligations, because the money as represented by individual companies is not money that the president or board of directors or manager can do with as he likes. It represents definite obligations to other people who have invested them with that money on the understanding that they will carry out their obligations.

Now, consistent with that, they have been meeting as far as they can the question of the bringing down of interest rates on mortgages and particularly western farm mortgages, to bring them more in line with what has happened in regard to prices, earning power and other conditions, with the result that to-day you have, for example, almost a universal 6 per cent rate prevailing on western farm mortgages which is not an economical rate from the standpoint of "Can you make money at that"?

[Mr. P. D'Arcy Leonard.]

Q. What is the prevailing rate in Ontario?—A. On farm mortgages?

Q. Yes.—A. I have not that informaton.

Q. You must have.—A. Not on farms. The average rate would be from 5½ to 6%.

Q. At the present time?—A. Yes, on existng mortgages.

Q. Do you not think, when you are permitted to do business under the law of this country, that you should be expected to do business in areas which need your service the same as in areas where it is not so needed; in other words, the attitude in the past has been that your companies, I take it, have done business where you can make your profits and there is no great amount of obligation to extend the service that you are expected to give in areas that are not so profitable? I think it is true that your companies realize now more than they did formerly that there is a sort of national obligation in regard to extending credit, do they not?—A. I am afraid that we still must subscribe to the idea that we should do nothing else with the money that is entrusted to us except to invest it on the basis that it will come back to us in accordance with the contract so that we can meet our own obligations.

Q. That is what I thought you would say. The purpose of this bill is to enable you to get credit from the Dominion government at a low rate of interest with the idea in mind that you will pass that benefit on to the people of Canada. If it is not your intention to do that, unless there is some good reason for your not doing it—what I had in mind was that no company should be permitted to charge 5 per cent—the companies which do not come into this scheme and carry out the intention of parliament to extend the benefit of this Act to the people will be no better off than those that could come in.—A. Mr. Tucker, I would like to make it clear that there is no objection if the Dominion government can supply money at low interest rates to be loaned for the institution controlling the interest rate upon which that money is loaned.

Q. There would be no objection?—A. No, in so far as that money is concerned.

Hon. Mr. CAHAN: No serious objection to the Dominion government supplying money for investment in districts which are not yet developed, sufficient to demonstrate that the investment is more than a gamble, because the real development and the development of the more distant parts of our country depends upon the interest rate being sufficient to cover the risk. The risk is greater in undeveloped districts than it is in urban districts and in farm districts which are nearer to the centres for the marketing of farm products.

The WITNESS: That is true.

Hon. Mr. CAHAN: It would be impossible, I think, to make the 5 per cent rate of interest applicable to the development of northern Quebec or for the development of that part of Labrador which is now a part of Quebec. Men who invest money in such undeveloped districts have an adequate return to cover the risk, and the risk involved is the risk that a certain percentage of these mortgages never will be paid in those undeveloped districts.

By Mr. Thorson:

Q. If you brought the general mortgage rate down would not that have the effect of bringing down the rate also in the undeveloped districts?

Hon. Mr. CAHAN: But never to bring it down to 5 per cent.

Mr. THORSON: It would bring it down.

Hon. Mr. CAHAN: Possibly. If I could not get more than 5 per cent on my money in Ontario it is quite possible that I might be willing to put it out for 8 or 9 per cent instead of 10 in northern Quebec. But the risk is fairly well estimated, I think, by those who make loans in those distant districts, and the

service of the loan in the distant districts is always more expensive than the service of the loans locally under direct supervision.

Hon. Mr. DUNNING: Do the questions asked by Mr. Thorson really have a bearing on what we are doing? We keep talking about a fixed rate of interest as a matter of fact, the bill does not contemplate a fixed rate of interest, and with the suggestion I made this morning that the government is prepared to consider favourably making that controlled spread apply with respect to the moneys borrowed under the terms of the bill from the bank, does that not very largely dispose of your fears, Mr. Leonard, with respect to what might be called the more pioneer areas? What difference would it make to anyone of your companies? If they became a member company to-day they would make their adjustments on all their existing mortgages in connection with the terms of the Act. They would be perfectly free to loan in undeveloped areas except that they come to the bank for their funds and, in that case, they would have to lend the funds secured from the bank at the spread set by the legislation.

Hon. Mr. CAHAN: If they come to the bank for some of the funds, can they differentiate between those funds and other funds of the company?

Hon. Mr. DUNNING: Most certainly. They would have to.

Hon. Mr. CAHAN: Under this bill they are not allowed.

Hon. Mr. DUNNING: That is the clarification I intended to apply.

Hon. Mr. CAHAN: Then the spread between the cost of money or credit obtained from the government through this government agency and the price of loan, or the interest payable on the loan, in the remote district would have to be so great as to cover the risk of loss in the remote and undeveloped district which is a greater risk than when the loan is made in the settled districts of the country.

Hon. Mr. DUNNING: Well the legislation, of course, does not contemplate districts, it contemplates the fact that the business of lending institutions is in fact the operating of a whole range of relative risks. Naturally they attempt to get their loans in the safest and most secure districts, but then all of them are trying to do it, Mr. Cahan.

Hon. Mr. CAHAN: Quite so.

Hon. Mr. DUNNING: The competition in lending in these areas in times of easy money is great, and they have tended for many years to go after the new areas. I remember, let me see, it is over 30 years ago now since I got a mortgage in the approved fashion of western Canada. When I use the term, approved fashion, of course I mean the approved fashion of those days. I am bound to say that my character didn't enter very much into it.

Hon. Mr. CAHAN: I think just looking at you would be some security.

Hon. Mr. DUNNING: Thank you. The approved fashion of that time was that a man would take a homestead and he would do most anything to get through his three years during which he demonstrated that he could live on the homestead without starving to death, and he would get as much credit as he could from the local merchant, or from the implement men, and by the time the three years was up he got his patent from the Dominion government and he had a lot of floating debt; and believe me the mortgage company agent would be around five minutes after that man got his patent trying to do business with him. That was the normal way in which it was done in those days.

Hon. Mr. CAHAN: Quite so.

Hon. Mr. DUNNING: I don't remember that they bothered very much about my character, except I suppose they assured themselves that I intended to stay on that farm; but I had to pay for that mortgage, it wasn't cheap.

Mr. DONNELLY: And many men got their patents but were not able to get any large mortgage at any low rate of interest.

[Mr. P. D'Arcy Leonard.]

Hon. Mr. STEVENS: It was an expanding condition.

Hon. Mr. DUNNING: It was an expanding condition, Mr. Stevens puts his finger on it. The mortgage companies were able to invest in the development of that country, and I do not think they can say of that experience that it was a bad experience.

The WITNESS: It was a good experience even then.

Hon. Mr. DUNNING: The rate of interest was high. I paid 8 per cent, and that was the rate prevailing in the industry.

Mr. DONNELLY: I thought we were going to have some other witnesses. If we are through with Mr. Leonard could we call someone else?

The CHAIRMAN: I do not think we are to have any other witnesses.

Mr. DONNELLY: I asked whether or not we were to have any more.

By Mr. Landeryou:

Q. I would like to ask the witness just what companies he represents—the Dominion Mortgage and Investment Association?—A. Yes.

Q. And you are going to place on the record the number of the companies and the names of the companies?—A. Yes, I shall do that.

Q. And will you give us the names of the companies that have their head offices in foreign countries and the companies that have their head offices in Canada, and the companies that have their head offices in Great Britain?—A. Yes.

Q. Could you give us the total amount of money these 51 companies have in mortgages on farms, and on urban homes throughout the country?—A. I think so.

Q. I understand the total is \$580,000,000?—A. I think so.

Q. Can you give us what proportion of that is invested by Canadian companies, what proportion is invested by British companies, what proportion is invested by foreign companies?—A. All that information, in time.

Q. Yes. Now, I want to get this information: these companies that are represented in the Dominion Mortgage and Investment Association, do they include insurance companies?—A. No.

Q. Will you give us the proportion of them that are insurance companies, and the amount of money the insurance companies have invested?—A. There are three sections; trust companies, loan companies and life insurance companies. You want the figures separately for the three classifications, I take it?

Q. For the three classifications, and also for the classification as to whether they are foreign, British or Canadian?—A. Yes.

Q. Now you say the funds of these companies are secured in an entirely different manner; that of the life insurance companies is from premium income; that of the loan companies is from capital stock and debentures; and I understand that that from the mortgage companies comes in from trust funds?—A. Trust companies' funds are from trust certificates.

Q. Can you give us the total figures with respect to these three classifications?—A. Yes.

Q. You stated that you are in accord with this legislation except for the question of dealing with urban homes; you are not satisfied that there is justification for the reduction as outlined in the bill?—A. I would not like to put it exactly in your phraseology, that we were in accord with the legislation. I would like to say that in so far as we recognize that there is a general farm mortgage problem we feel this will be a contribution to it if we could come in and take part in it.

Q. You recognize there is some justification for general debt legislation in the Dominion of Canada?—A. In respect to farm mortgages.

Q. And not so particularly in respect to urban mortgages?—A. That is right.

Q. And do you think greater justification exists for general legislation of this kind; that it would provide as sound a solution as to have legislation operating on a particular matter in each province?—A. That is a purely hypothetical question. Unless I had a particular piece of legislation I do not think I could generalize on it.

Q. For instance, in the province of Nova Scotia they may or may not require the same debt adjustment as would be required we will say in the province of Saskatchewan?

Mr. MCPHEE: Why not say Alberta?

Mr. LANDEROU: It makes no difference to me at all.

By Mr. Landeryou:

Q. Now, in an attempt to pass legislation of a national character do you think that would be more satisfactory than the provinces themselves dealing with the matter as they may see fit for each particular province?—A. Dealing with it from the standpoint of the national industry and having in mind national credit, the result might be better than to attempt to deal with it per location; just the same as it might be better than to deal with it on individual debtor-creditor basis.

Hon. Mr. CAHAN: And on the basis of provincial credit there would be differences as well.

By Mr. Landeryou:

Q. That is what I had in mind in dealing with the matter, let the provinces individually deal with this debt adjustment, with provincial credit, rather than dealing with the whole subject of Dominion credit?—A. As I say, we could not give a hypothetical answer as to a comparison between particular types of legislation unless one had them exactly before him. In dealing with this legislation which is of a national character I am dealing with it simply on the basis that it stands here, without passing any particular opinion on a comparison between it and any other method.

Q. Have you any estimate of the amount of write-off that would be necessitated if this legislation were adopted by your 51 companies?—A. No, I have not, and I do not think it is possible at the present time to estimate that.

Q. You could not give an approximate figure?—A. No. You see, it combines with it the question of valuation. Just at the moment it is a question of a blank cheque. Until one knows something about the valuation, the basis of the valuation, no one can say what the cost of this is going to be per individual company, or per group, or per farmer, or per government.

Q. And a lot depends on the amount of investment of these various companies, as to locality; if one company has its investments we will say in the province of Ontario and another company has its investments in the province of Saskatchewan, the company which had its investments in Saskatchewan would take a greater write-off than the one which had its investments in Ontario?—A. That would be particularly true.

Q. Could we get from you the amount of the investments of the companies you represent in each of the provinces; that is, the amount of money the insurance companies have invested in these provinces?—A. In so far as the association is concerned, we haven't got those figures.

Q. You have not got those figures?—A. No.

Q. If we wanted to go into the figures of any of these companies we would have to get one of the individual company representatives so we could question

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him; that is, if we wanted to go into one of the insurance companies, you could not give us the figures as to the amount of premium income they have invested in that way?—A. A great many of these figures are now in the public record, Mr. Finlayson's report. I am not sure but what he does show mortgages classified as to provinces per company as a whole at any rate. I know in the Ontario report in so far as the loan and trust companies are concerned they are divided as between eastern mortgages and western mortgages, but there is no information that I know of available setting out per individual company the geographical location.

Hon. Mr. DUNNING: Yes. In the register of loan companies for Ontario by individual companies they set out the loans per province. I have it before me pretty completely. It is a matter of public record, Mr. Landeryou, to that extent.

Mr. THORSON: But not for life companies?

Hon. Mr. DUNNING: I do not know that without looking it up. It is merely a matter of looking it up.

Hon. Mr. CAHAN: Could you give us a synopsis of that and have it on the record?

Hon. Mr. DUNNING: It would be difficult to put a synopsis on the record because it deals with it with each separate company individually. We would require to put the whole volume in.

Hon. Mr. CAHAN: That might be worth while. It would be interesting to get an idea as to the different companies.

Hon. Mr. DUNNING: It is quite voluminous and the whole basis for it would be these individual statements.

Hon. Mr. CAHAN: Is that the current volume?

Hon. Mr. DUNNING: It is the 1938 report of the registrar of loan corporations for the province of Ontario.

By Mr. Landeryou:

Q. Do you feel that any of the 51 companies represented in your association are in a sufficiently strong financial position to take the loss that would be necessary under this legislation?—A. I cannot speak as to any individual company.

Q. You cannot speak as to individual companies?—A. No.

Q. Then we would have to get some of the individual companies to speak for themselves, as to their ability to carry the write-off?—A. Yes, but I question at the moment whether any individual company could make that decision because of the unknown factors that are still to be settled before the question of joining the bank is decided.

Hon. Mr. DUNNING: Could I interject one question there, while we have Mr. Leonard here. I mentioned in the house that, of course, all of these lenders of money who are creditors in that capacity are also debtors to a very great extent in various ways. I think it would be rather helpful, Mr. Leonard, if you could let us have, not with respect to individual companies—I know that you can't do that—particulars of the value of obligations outstanding by companies on which they pay say $5\frac{1}{2}$ per cent, 5 per cent, $4\frac{1}{2}$ per cent, 4 per cent and away on down to 2 per cent. It has had quite a bearing on our consideration of the whole problem, and also there is the further factor which you might bear in mind in preparing the information, that we are not unmindful of the fact that some of the obligations of these companies are in the form of current debentures of a savings character some of which have some years yet to run at rather high rates of interest. I can imagine, of course, that each company is trying to clear off its high rate obligations as fast as it can, but it cannot pay them off until the term of the obligation permits; and any information you can give us as to the aggregate of high-rate obligations which still have a period to run would be helpful in working out details later on.

Hon. Mr. CAHAN: Many of their obligations are not callable, I understand?

The WITNESS: Apart from deposits, I think hardly any of them are.

Mr. THORSON: Mr. Chairman, in the light of what Mr. Dunning asked, would it be possible to arrive at the average rate of interest on these obligations properly weighted with regard to the various elements that would enter into the weighing of the interest rates to get the true average?

The WITNESS: Mr. Thorson, there are really two average rates, as you might almost say. The easiest one to get would be the average current rate being paid on the term obligations, trying to separate them from any other.

Mr. THORSON: Yes.

By Mr. Landeryou:

Q. Would you consider that there would be a difference in the amount of sacrifice as between insurance companies, trust companies and loan companies?—A. I could not even tell you that. I do not know myself what the effect will be per individual company or per groups of companies.

By Mr. Plaxton:

Q. If we carried out your suggestion, namely that the act shall not apply to urban mortgages which are not non current, might not that create an inducement to those people who have communicated with Mr. Dunning and who have kept their mortgages up to date (and which are still current and would be if this act were brought into force), perhaps to let their interest and principal slide, so to speak?—A. That is always the trouble with any legislation that is passed for the relief of those who have not been able, for perfectly good reasons, shall we say, to keep up their contracts. When something is done for them, others may feel that they might have been better off if they had not made the effort that they did, even on the basis of the legislation as it stands now. The same thing might be perfectly true here. The man who has let his interest go beyond two years will now get a write-off; the man who has reduced his mortgage to below 80 per cent will say, why should my neighbour who did not make the same efforts that I did, get some relief? There is always bound to be that difficulty, and all I can say is that I think you are getting nearer to the problem which exists by confining it to the question of the man whose contract is overdue and who has not been able by reason of the condition of the property or the value of the security to get a new mortgage or even renew his contract.

Hon. Mr. DUNNING: That is the widest point of difference, I think, between us now, Mr. Leonard. Personally I find it very difficult indeed to meet the point I raised before and at the same time consider at all favourably the suggestion you make that any urban mortgage legislation should be confined to what you call "non-current mortgages". It seems to me the harm that would be done would be greater than the good that would be done. I must say I am not convinced, although I am willing to listen to further argument. As things stand at the present I regard that as a vital feature.

The WITNESS: Of course, I can only go back and stress again the question of ability of a company to enter into a membership agreement and say that perhaps that is the crux of the whole plan, and where that result cannot be achieved by reason of the fact that the company must reduce the rate of interest and make write-offs. Where there is ability to pay they may say they cannot come in under the plan, and that in the long run it may seem to them

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to be better to try to work for a larger volume than to deal with the real problem which undoubtedly in the minds of all of us does exist, even though with regard to the other matter there might be some disagreement.

By Hon. Mr. Dunning:

Q. Have you considered, or have your members considered it from this standpoint. I can understand, of course, that each company must look at it from the standpoint of its own welfare in relation to the scheme. Of course you tell me, and you told me this morning, that a company that had a large volume of urban mortgages and a relatively small volume of farm mortgages would tend to stay out. Do you think you have attached in that regard sufficient weight to what the provinces may do by way of legislation? I may frankly tell you that I expect that a number of the provinces will say, yes, we will legislate with respect to mortgages adjusted under the terms of the federal act, which would mean that the company which comes into this scheme will be relieved of certain disabilities with respect to its whole activities in a province; whereas, if it does not come in, it will remain under those disabilities. You are thinking in terms of tangible values which can be added up on a sheet of paper. I am going now beyond that into the general field involved in getting this mortgage situation more or less rationalized.

Mr. TAYLOR: Into the historical tendency?

Hon. Mr. DUNNING: Well, perhaps that has a bearing, too.

Mr. TAYLOR: I think that is one which Mr. Leonard should bear more carefully in mind. He is avoiding it, I fancy.

The WITNESS: I am not avoiding any aspect that you want to ask and on which I have any information. Dealing with Mr. Dunning's point, there is no doubt that the companies have considered the factor that he mentioned. It is not from any angle of what another alternative might be that the submission that I have made has been made. They have reached the point where they have to consider the question of can you or can you not do that, and that is the point upon which the submission is made. It has been made upon the point that the decision of the company is going to be reached on this point, can you or can you not do it?

By Mr. Landeryou:

Q. The only way we can get that information is to have some of these companies in Canada come here and give all the facts?—A As I understand, Mr. Landeryou, I do not think any of them can tell you that.

Q. How much of this \$580,000,000 has been loaned out in the last five years in western Canada? Has there been any substantial loans made by these companies with whom you are associated in western Canada in recent years?—A. Oh, very very little.

Mr. DONNELLY: It is all loaned now.

The WITNESS: Yes, it is all loaned already.

Mr. DONNELLY: And you cannot get it back.

By Mr. Landeryou:

Q. A substantial portion of it has been loaned out maybe ten, fifteen or twenty years ago?—A. Very little loaning done since 1929.

By Mr. Quelch:

Q. Is it true that quite a large number of the farmers took advantage of the Farmers' Creditors Arrangement Act prior to 1936? Since that time a lot of them have lost their farms owing to their inability to keep up their

contracts?—A. I have not any information on that. I have no definite information in regard to that. I do think that someone has told me incidentally that there were a surprising number of them that had done very well.

Q. It is also true that boards of review have realized that because since 1936 they have given the farmers far more sympathetic consideration than they did prior to that time.

Mr. DONNELLY: There were four years of crop failure.

The WITNESS: It is hard to generalize. Take Saskatchewan, for example. 1937, I suppose, was the worst year in the history of the province.

Mr. DONNELLY: There were four crop failures since that time.

The WITNESS: 1938 was better, but still a long way from being satisfactory. All these factors enter into it, and everybody recognizes that.

Mr. TUCKER: In regard to what you said, Mr. Quelch, so far as Saskatchewan is concerned, I followed the record of the number of closures very closely and have analysed the figures up to the present in Saskatchewan with regard to the Farmers' Creditors Arrangement Act, and I know that before a company can foreclose they must get the permission of the debt adjustment board in the province, and I can say from what I have seen of the figures no one has been foreclosed unless there was every justification for it. That is true in Saskatchewan; I cannot speak for Alberta.

Mr. QUELCH: It is true, but if it had not been—

The CHAIRMAN: Gentlemen, I may say that the reporter is not able to hear what is going on. If you stand the reporter can get you for the record, otherwise I am afraid he cannot.

Mr. QUELCH: Even where the ability to pay has been taken into consideration in order to get a reduction of debt, it has not been possible for the farmers to meet their contracts for many reasons. If this legislation is put into effect apparently there will be certain provinces where it will not be operative unless certain provincial debt legislation is rescinded or done away with.

Hon. Mr. DUNNING: No.

Mr. QUELCH: Are there not some provinces to-day where member companies would not operate under the provincial legislation?

Hon. Mr. DUNNING: I may say as to that, this legislation does not call for a rescinding of provincial debt legislation. What it does call for is that such legislation, where it is in the judgment of the central bank detrimental to the security involved, and in which the dominion is interested, shall not apply to mortgages which have been adjusted under the terms of this legislation.

Mr. LANDERYOU: In the final analysis, won't that mean the repeal of any provincial legislation that has anything to do with mortgages that are under the supervision of the Central Mortgage Bank? Is not that what it really means?

Hon. Mr. DUNNING: No, certainly not.

Mr. QUELCH: I was under the impression it would mean that.

Mr. TUCKER: Well, now, I should like to ask one thing in regard to the suggestion that Mr. Leonard made about a hypothetical case of the man who borrowed a sum of money in an urban centre and whose property is now worth less than the amount of the mortgage, so that the company would have to take a write-down in respect of that part and therefore lose it—

The CHAIRMAN: Mr. Tucker, the reporter cannot hear you.

Mr. TUCKER: I shall repeat it. Mr. Leonard, I should like to refer to the point which you raised of the hypothetical case of the party in the urban centre who had borrowed a sum of money against a piece of property and the asset now is greater than the appraised value of the property. But his personal

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obligation could be enforced out of other assets. It seems to me that the number of such cases would be very small indeed. That is, if the person was worth the money and well able to pay it seems to me that the likelihood is that he would have been paying steadily the amount owing and this mortgage would be almost of necessity less than the value of the property. If that is not true I should like you to indicate your opinion as to the volume that would be affected by the condition you state, because the mere statement that there might be somebody like that is surely not a basis for us to change the whole basis of our legislation?

The WITNESS: It is quite proper that I should try to explain that to you, Mr. Tucker. In dealing with such mortgages broadly throughout Canada, they do undoubtedly have a depreciation in value of real estate, so that even where a man is drawing a good salary and perfectly able to pay his interest, and if necessary pay his principal and reduce it, he has questioned whether it was good business on his part to do so. He considered that it would be better business perhaps to leave the mortgage at its full amount, not reduce it—

Mr. HILL: Why should he be relieved?

The WITNESS: That is the suggestion that we are making.

By Mr. Tucker:

Q. You are assuming that there is a man who is well able to pay but you have let him go on and not forced him to pay. Do you do business like that?—

A. The moratoria have been protecting him.

By Mr. Landeryou:

Q. Which provinces?—A. Every province in Canada except New Brunswick.

By Mr. Tucker:

Q. You suggest, Mr. Leonard, that in any province in this country a man is protected who is well able to pay and refuses to pay?—A. Undoubtedly.

Mr. THORSON: Thousands of them.

Mr. TUCKER: It is certainly not true of Saskatchewan.

The WITNESS: Where the bigger volume of city mortgages is, that situation is quite prevalent.

Mr. TUCKER: I am surprised to hear it, because it is not true in Saskatchewan.

Hon. Mr. DUNNING: That is true, to my knowledge, also. I have no doubt as to the truth of that, Mr. Tucker, unfortunately. I have to have to admit it, but it is true.

Mr. TUCKER: Elsewhere.

Hon. Mr. DUNNING: What Mr. Leonard says is true.

The CHAIRMAN: Are there any others who desire to give evidence? Have members of the committee asked Mr. Leonard all the questions they have in mind? Then, Mr. Leonard, I think you are excused.

Witness retired.

The CHAIRMAN: Are there other representatives of the borrowers or lenders?

Hon. Mr. DUNNING: Is any one else going to speak?

Mr. LEONARD: Not from our group, Mr. Dunning and Mr. Chairman.

The CHAIRMAN: Shall the preamble carry?

Some hon. MEMBERS: Carried.

Mr. LANDERYOU: Are you going to have any more witnesses called?

The CHAIRMAN: Not that I know of.

Mr. LANDERYOU: It is going to be rather difficult for me, at least, to come to any real conclusion as to the effect of this bill upon the Dominion of Canada as a whole, without having other witnesses called. I should like to have a witness called that represents some insurance company, so that we can really go into this whole business, as it affects that individual company and find out what effect it is going to have on the company and upon those who are doing business with the company. For instance, there are insurance companies with head offices in the United States and other foreign countries; there are insurance companies with head offices in Great Britain and there are insurance companies with head offices in Canada, doing an insurance business and loaning money on mortgages, farm mortgages and urban mortgages, in the province of Alberta particularly. I have a record of the total amount of premiums that are paid to these life insurance companies and the total amount of premiums that are paid to the automobile insurance companies, the hail insurance companies and miscellaneous insurance companies.

The CHAIRMAN: Pardon me a moment, Mr. Landeryou. Is that the information that you put on record the other day?

Mr. LANDERYOU: That is some of the information I put on the record the other day. But I have it for each company.

The CHAIRMAN: Yes. It is not necessary to place it on the record again.

Mr. LANDERYOU: No. I am not placing it on the record.

The CHAIRMAN: All right.

Mr. LANDERYOU: They are taking out of the province somewhere in the neighbourhood of \$17,000,000 a year in premiums and they are returning to that province in the way of settlements of all claims only a fraction—less, I believe, than 50 per cent—of the total premiums paid to them. In other words, their net losses, including adjustment expenses, are approximately 50 per cent of their gross premium income. They have millions of dollars invested in that province in mortgages, on farms and on homes. I believe the same thing holds true in every province in Canada. I am further of the opinion that they can take a substantial loss or make substantial write-offs in respect of the mortgage indebtedness of the people of Canada without jeopardizing the soundness of the companies. I would suggest that we have a representative of these foreign insurance companies, a representative of one of the large British companies and a representative of one of the large Canadian companies, who would come here and give us the facts and figures in relation to the whole set up, so that we as a committee can judge whether or not this legislation is in the best interest of the Canadian people, I think just to have the evidence that has been presented—and it has been valuable evidence—is not sufficient. Further, we should have a representative from the provinces; for, after all, ability to pay has to be considered. There are men qualified to give us information as to the ability of the debtors of western Canada to meet their obligations as set out in this bill. We should have those witnesses here before the committee. I believe there is a member here who the other day suggested that Mr. Hope, who is a professor in one of the western universities—I believe in the province of Saskatchewan—should be called, for he has made a particular study of the mortgage situation in western Canada.

Mr. CLEAVER: Pardon me, Mr. Landeryou; but to what point would you hope that Professor Hope would direct his testimony to assist us?

Mr. LANDERYOU: He has, I believe—as they have in the province of Alberta—a particular knowledge of the debt structure of the province of Saskatchewan. He knows the position of the farmers at the moment; he has

made a study of the effect of reduced prices upon their income; and he has taken into consideration their overhead and the debt which they owe to machine companies, to doctors, to dentists and to other creditors in their communities.

Mr. CLEAVER: Yes. But you must realize that any legislation which we pass must be permissive only in so far as the companies are concerned. Do you suggest that we could give further scope to the present bill and still have enough of the companies come under the Act to make it of any effect at all?

Mr. LANDERYOU: We may be able to. There was no evidence brought before the committee to show whether or not those companies could stand the write-offs of this legislation.

Mr. CLEAVER: Professor Hope could not tell us that.

Mr. LANDERYOU: I did not suggest that he could. I suggested that we have representatives from these companies—representatives of these insurance companies, representatives of these mortgage and loan companies, and representatives of these trust companies here before the committee.

Mr. CLEAVER: My question was directed to your suggestion that Professor Hope should be called.

Mr. LANDERYOU: Yes.

Mr. CLEAVER: While I would welcome all information, I do not see that he could give us any information that would be of any assistance.

The CHAIRMAN: He has the privilege of coming if he cares to come.

Mr. MAYBANK: If Mr. Landeryou will permit me to do so, I may say that I am quite sure there are members of the committee who can inform him now as to the evidence that these companies would give with reference to their ability to take the cut. You cannot find any representatives of any mortgage companies or any insurance companies anywhere in Canada—and if you were looking over the world, you could not find them—who are going to come here and inform you, "Sure, we can take the cut." They will all say, "No, we could not possibly stand it."

Mr. LANDERYOU: What I am anxious to do is to get an examination into their operations in the dominion of Canada, and we can ascertain whether or not they can take this cut or not. That is what I am after. I should like to have representatives of these companies here for that purpose. The member who suggested that a representative of the provincial governments be sent here recommended that Mr. Hope come before the committee. I have no doubt in my mind but that the hon. member has a number of questions to ask him in respect to the debt situation in western Canada.

Mr. TAYLOR: Are you suggesting that you would alter this legislation if these companies establish that they could not take the cut?

Mr. LANDERYOU: I am not making any recommendation. All I should like to have is more information. As a member of this committee, I do not know just what the debt situation is in respect to the provinces of Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta or British Columbia. I do not know. It has not been established to the committee whether the same adjustment is necessary in one province as is necessary in another province, or whether this whole thing should be handled by national, federal legislation or handled by the provinces. I think we are just rushing this thing through without the committee being informed on this matter at all. I do not know what rates of interest have been prevailing in Alberta—the general rates of interest on all mortgages—as compared with the rates of interest in Ontario or the other provinces. We should have more information on this whole mortgage indebtedness situation. I do not think that we have had enough at all.

Mr. THORSON: If you found a case where a mortgage company could take a cut, what would you do with that information? Would you change the basic features of the Act and make the Act compulsory?

Mr. LANDERYOU: I am not suggesting any changes. I am saying that this information should be available; and what we decide to recommend to parliament will depend upon what conclusions we come to after getting all this information.

Hon. Mr. DUNNING: Mr. Chairman, if I may be permitted, I should like to make a general statement as to the procedure of the committee. It will be, of course, in the hands of the committee. Needless to say, the government has no objection to anyone appearing here to give evidence. But speaking now as a member of the committee I may say that, if there is a proposal to summon someone to give evidence by the committee itself, then I think the committee should examine the possibility of that individual, whoever he may be, contributing anything to the committee's appreciation of the whole question.

Mr. THORSON: Certainly.

Hon. Mr. DUNNING: After all, what is the whole question? The proposal is a simple one in its essence. Will anybody say, from any part of Canada—and remember this is the most representative body in Canada, this very committee—that it would, from the standpoint of debtors, be a bad thing to see to it that their debt did not exceed 80 per cent of its value? That is point number one.

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. DUNNING: Would anybody say that, from the standpoint of the debtor, it would be a bad thing for a debtor anywhere in Canada to have his arrears of interest in excess of two years written off? That is the second point. Would anybody say that it would not be to the benefit of any debtor, from the Atlantic to the Pacific, to have his mortgage adjusted to bear 5 per cent interest in future? That is the third point. Those to me are the essential questions from the standpoint of the debtor. When we come to the standpoint of the lender and the lending institutions—

Mr. LANDERYOU: There is just this question—

Hon. Mr. DUNNING: May I complete my statement? From the standpoint of the lending institutions, we have had before us to-day counsel for the body which contains and represents more of the lending institutions than any other organization in Canada. We have had the views of that organization presented by Mr. Leonard, from the standpoint of their criticism, their constructive suggestions. He has been unable to tell us, as the individual companies themselves would be unable to tell us offhand, whether or not they can become members under the terms proposed. It seems to me that our problem narrows itself down to easily comprehensible limits. I do not say for a moment that no problem exists; but I do urge upon this committee that it is not the kind of problem on which we want to summon witnesses from all over creation to tell us what the answer is. The problem is one which is presented to our business judgment as representatives of the people. Having in mind the limits of the proposal in so far as it affects the debtors, its essentially voluntary nature in so far as it affects the creditors and the provinces, for my part I cannot see that any great number of witnesses are necessary. The committee can, of course, do as it wishes in that regard.

Hon. Mr. CAHAN: Mr. Chairman, I criticized this bill on its second reading, but I should like to make a statement for the record, if I may. I will go to any reasonable extent which may be found necessary to relieve the actual financial difficulties of the farm owners in the three provinces of the middle west who are unable to meet their mortgage obligations; but I hesitate to adopt

any scheme which would tend to destroy the basis of existing credit in the other eastern and western provinces, credit which is due to the existing confidence of creditors in the good faith and honesty of their debtors. In order to resolve the problem as I see it, I think it would be advisable if we could have one or two or three witnesses representing individual companies who could give us in more detail information with regard to certain of the issues which arise from the evidence of Mr. Leonard, K.C., who has given his evidence to-day.

I do not wish to summon mortgage creditors from all over the country, but it seems to me that we might have the evidence from one at least of the leading insurance companies.

Mr. LANDERYOU: Yes.

Hon. Mr. CAHAN: One at least of the leading mortgage companies and, if there are other loaning companies, one representing each of the minor classes.

Mr. THORSON: Mr. Chairman, I think it would be highly desirable to have representative witnesses of these classes of companies if they can give us information along the lines that have been requested.

Mr. Leonard has indicated the difficulties involved in any individual member of the association giving us concrete evidence as to their individual position by reason of the difficulties involved in the fixing of valuations, for one thing. Now, if any of the companies wish to appear before us and present their views, I should think that we would be very glad indeed to hear what they have to say. But I do not think we ought to put the individual companies in the position of putting them on the spot, so to speak, and asking them, "Will you come in under this legislation or will you not?" I do not think any representative company should be put in that position. If they are willing to come and add to the information that we have already had from the officers and counsel of their association, unquestionably it would be of interest to us as members of the committee to hear what they have to say; but I would not think it desirable to summon or in any way put them on the spot.

Mr. LANDERYOU: Mr. Chairman, I am in favour of reducing the mortgage indebtedness of this country. I am not opposed to writing off 20 per cent and reducing the rates of interest. But this piece of legislation is not compulsory. I do not think it will serve the best interests of western Canada. That is why I want more information. I think there should be a complete examination into this whole question of mortgage indebtedness, and we have not had it as yet.

As far as western Canada is concerned, they have debt legislation covering all classes of debt, not only debts on farms and in the homes but covering farm machinery and other debts as well. This legislation, as far as I can gather—

Mr. CLEAVER: What has happened to your credit as a result?

Mr. LANDERYOU: These companies have not been loaning in any province in western Canada or loaning to a large extent in the maritime provinces. I believe the credit of the province of Alberta is higher than any province in western Canada. We are reducing our debt.

The CHAIRMAN: Order.

Mr. LANDERYOU: Do not worry about the credit of the province of Alberta. As far as the credit of the province of Alberta is concerned it compares very favourably with the credit of any province in the Dominion of Canada.

Mr. CLEAVER: I do not see how you can say that.

The CHAIRMAN: Order, please.

Mr. LANDERYOU: Now, this legislation is centralizing the control of the whole set-up in the hands of a Central Mortgage Bank who are working hand in glove with those large financial institutions with their head offices in any place but Canada. Some of them have their head offices in Canada. It is working hand in hand with these international institutions—

Hon. Mr. DUNNING: That is just pure nonsense.

The CHAIRMAN: Order.

Hon. Mr. DUNNING: I have a right to say, Mr. Chairman, that this is pure nonsense, if I want to.

The CHAIRMAN: "Nonsense" is hardly parliamentary. Mr. Landeryou, it is almost six o'clock. I would suggest that we might all be in better humour to-morrow morning at 11.15.

Hon. Mr. DUNNING: Before adjourning, with respect to the suggestion which was made by Mr. Cahan, and I am not sure that it was made by Mr. Landeryou but it certainly was by Mr. Thorson, the representatives of a number of the leading institutions are here to-day; I would suggest that they might consider overnight as to whether one or more of their number representing the three types of institutions might give evidence. I do say this: that I do not think the representative of an individual company on the stand here can properly be asked intimate questions with regard to the particular business of that company beyond what normally exists in published statements.

Mr. CAHAN: The chairman will protect the witness.

Hon. Mr. DUNNING: The chairman, I am sure, will see to that. Mr. Landeryou is a difficult man to protect a witness against. But if that is agreeable I have no objection.

Mr. TUCKER: Mr. Chairman, what I am afraid of is that parliament will conclude its labours if we do not sit more often than in the mornings and afternoons. We will be here when they are through and there will be danger of losing this legislation.

Hon. Mr. DUNNING: No, sir.

Mr. TUCKER: As far as I am concerned, we have to be here anyway and I would just as soon be here as in the house.

Hon. Mr. CAHAN: But there are other matters in the house which concern some of us.

Mr. TUCKER: This bill is not any harder than any other on which we sit in the house and do the work there, and there are many sections of this bill that would not be affected at all by the evidence we get, and it seems to me we might sit to-night from half past eight to half past ten to consider these sections.

In regard to what Mr. Landeryou said, I want to say that as far as I am concerned I do not need to hear any representative from any financial institution in this country as to what is good for the people whom I have the honour to represent. I have my own opinions. I am ready to listen to representatives, but I do not have to hear them to know what I should do in regard to this bill. So that I, and I think a lot more, are ready—

Hon. Mr. CAHAN: You have no difficulties then?

Mr. TUCKER: —to support this bill and vote it into effect, regardless of what any representative of any financial institution may say about it. They may be able to help us, Mr. Chairman, but I do not think we need to take our opinion from them. I do not see any reason why we should not go on and consider this bill to-night.

The CHAIRMAN: Gentlemen, what is the pleasure of the committee as to adjourning? All those in favour of adjourning until to-morrow morning? All those in favour of sitting to-night?

We shall adjourn until to-morrow morning at 11.15 o'clock.

(At 6 p.m. the committee adjourned to meet again at 11.15 a.m. Tuesday, May 30, 1939.)

APPENDIX ON STATISTICS OF MORTGAGES IN CANADA

(A.) MORTGAGE LOANS AND AGREEMENTS FOR SALE HELD BY LOAN, TRUST AND INSURANCE COMPANIES AS AT DECEMBER 31, 1937

(Data taken from Reports of Dominion Superintendent of Insurance and Ontario Registrar of Loan Corporations)

(Thousands of dollars)

	Total	B.C.	Alta.	Sask.	Man.	Ont.	Que.	N.B.	P.E.I.	N.S.
<i>Loan Companies—</i>										
Registered in Ontario.....	147,607	8,775	9,553	23,359	12,468	69,357	22,753	.....	1,342	.....
Others registered with Dominion.....	10,077	.....	151	332	685	.....	.....	.....	8,909	.....
Total.....	157,684	8,775	9,704	23,691	13,153	69,357	22,753	.....	10,251	.....
<i>Trust Companies—Company Funds (1)—</i>										
Registered in Ontario.....	15,668	449	2,090	3,213	1,833	5,684	1,908	.....	433	.....
Others registered with Dominion.....	823	.....	21	324	86	.....	32	.....	360	.....
Total.....	16,491	449	2,111	3,537	1,919	5,684	1,998	.....	793	.....
<i>Trust Companies—Guaranteed Funds (1)—</i>										
Registered in Ontario.....	66,790	1,208	3,454	9,175	4,694	40,348	6,228	.....	1,683	.....
Others registered with Dominion.....	3,097	.....	26	459	132	.....	100	.....	2,380	.....
Total.....	69,887	1,208	3,480	9,634	4,826	40,348	6,328	.....	4,063	.....
<i>Life Insurance Companies (2)—</i>										
Farms and Other: Total.....	343,714	22,265	22,237	48,313	33,194	134,520	81,640	626	56	863
Farms—Total.....	65,091	285	16,008	37,926	9,972	951	22	.....	27	.....
Amount on which interest due 1 year or more.....	35,127	238	10,341	20,667	3,759	107	1	.....	14	.....
Others—Total.....	278,623	21,980	6,229	10,487	23,222	133,569	81,618	626	29	863
Amount on which interest due 1 year or more.....	25,009	2,211	1,336	2,205	3,000	9,327	6,842	58	.....	30
Grand Total.....	587,776	32,697	37,532	85,175	53,092	249,909	112,719	.....	16,652	.....

(1) Mortgages held by Trust Companies in Estates, Trust and Agency Funds are not included. A close approximation of the total mortgages is as follows:—

Dominion Companies.....\$ 33,105,211
Provincial Companies..... 139,416,548

\$ 172,521,759

(2) This does not include mortgages owned by British and Foreign Insurance Companies but not pledged with a trustee in Canada.

(B.) *Census Data on Farm Mortgages:*

The census figures give only mortgages on farms being operated by their owners, including parts of farms owned. The term "mortgage" is defined broadly and appears to include agreements for sale. The totals ascertained by the census of 1931, and by the census of 1936 for the Prairie Provinces, are given below:—

	1931	1936
Canada.. . . .	\$671,776,500	....
Prairie Provinces.. . . .	342,511,700	\$347,843,700
British Columbia.. . . .	15,177,200	....
Alberta.. . . .	107,519,000	108,402,600
Saskatchewan.. . . .	175,770,300	188,118,300
Manitoba.. . . .	59,223,400	51,332,800
Ontario.. . . .	199,755,100	....
Quebec.. . . .	96,409,400	....
New Brunswick.. . . .	6,485,400	....
Prince Edward Island.. . . .	4,866,700	....
Nova Scotia.. . . .	6,570,000	....

N.B.—The census collects no data in regard to urban mortgages.

(C.) *Farm Mortgages held by various Government Organizations:*

1. DOMINION GOVERNMENT

Canadian Farm Loan Board as at March 31, 1938—

First mortgages.. . . .	\$26,581,624 26
Second mortgages.. . . .	2,969,582 87
Agreements for sale.. . . .	352,021 26
Total.. . . .	\$29,903,228 39

Soldier Settlement Board as at March 31, 1938—

Total loans.. . . .	\$47,867,432 85
Total Dominion Agencies.. . . .	77,770,661 24

2. PROVINCIAL GOVERNMENTS

British Columbia

Farm Settlement Board, etc.	\$ 671,869 00
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Saskatchewan

Farm Loan Board (as at April 30, 1938)—Advances owing to Government.. . . .	16,387,983 00
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Manitoba

Manitoba Farm Loans Association (as at April 30, 1938)—Total mortgages and agreements for sale..	4,056,474 00
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Ontario

Agricultural Development Board (as at March 31, 1938)—Debentures, less repayments to date..	44,935,000 00
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Quebec

Quebec Farm Credit Bureau—Total loans made during first two years of operation, up to April 30, 1939.	30,771,439 00
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Nova Scotia

Land Settlement Board (as at November 30, 1938)— Loans to settlers, etc.	567,500 00
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Total—Provincial Organizations—approximate.. \$97,000,000 00

(D.) *Urban Loans made under Dominion Housing Act and National Housing Act:*

Total to May 27th, 1939.. . . .	\$34,122,032 00
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(E.) *Land Corporations:**Canadian Pacific Railway* (as at December 31, 1937)

Mortgage Coll. and loans and advances to settlers.. . . .	\$ 3,564,629 00
Deferred payments on lands and townsites.. . . .	37,366,989 00

\$40,931,618 00

Hudsons Bay Company.. . . . (?)

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Canada - Banking and Commerce
- Banking Committee, 1939

SESSION 1939

HOUSE OF COMMONS

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

BILL 132

AN ACT TO INCORPORATE THE

CENTRAL MORTGAGE BANK

No. 2

TUESDAY, MAY 30, 1939.

WITNESS:

Mr. T. D'Arcy Leonard, K.C., General Counsel for The Dominion
Mortgage and Investments Association, Toronto

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1939



MINUTES OF PROCEEDINGS

TUESDAY, MAY 30, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Cahan, Clark (*York-Sunbury*), Cleaver, Coldwell, Deachman, Donnelly, Dubuc, Dunning, Fontaine, Hill, Howard, Jaques, Kinley, Kirk, Landeryou, Leduc, Macdonald (*Brantford City*), McLarty, Moore, Perley, Plaxton, Quelch, Raymond, Ross (*St. Paul's*), Stevens, Taylor (*Nanaimo*), Thorson, Tucker, Vien, Ward, White.

In attendance: Dr. W. C. Clark, Deputy Minister of Finance, T. D'Arcy Leonard, K.C., General Counsel for The Dominion Mortgage and Investments Association, and representatives of various companies interested in the bill under consideration.

The Committee resumed consideration of Bill 132, An Act to Incorporate the Central Mortgage Bank.

Mr. Leonard was recalled and further examined.

After general discussion as to the advisability of calling further witnesses, it was agreed to proceed to the consideration of the different clauses of the Bill.

Section 1 carried.

Section 2 carried with the exception of paragraphs (g) and (i) which stood over for further consideration.

Section 3 to section 10, both inclusive, carried.

At 1 o'clock the Committee adjourned until 4 p.m.

AFTERNOON SITTING

The Committee resumed at 4 o'clock.

Members present: Messrs. Baker, Cahan, Clark (*York-Sunbury*), Cleaver, Coldwell, Deachman, Donnelly, Dubuc, Dunning, Hill, Howard, Jaques, Kinley, Landeryou, Macdonald (*Brantford City*), Maybank, Moore, Perley, Quelch, Raymond, Ross (*St. Paul's*), Stevens, Taylor, (*Nanaimo*), Thorson, Tucker, Ward.

In attendance: Dr. W. C. Clark, Mr. G. D. Finlayson, Superintendent of Insurance, Mr. Leonard and representatives of various financial companies.

The Committee resumed consideration of Bill No. 132.

Section 11 to section 14, both inclusive, carried.

Section 15.—Moved by Mr. Dunning that section 15 be amended by striking out the words "a membership" in line 17, on page 5, and substituting therefor the word "an"; and by inserting after the word "agreement" in line 17, page 5, the words "(in this Act called a membership agreement)".

Motion carried and section 15, as amended, carried.

Section 16.—On motion of Mr. Cleaver,

Resolved,—That each paragraph of section 16 be considered separately.

Moved by Mr. Dunning that sub-paragraph (i) of paragraph (a) be amended by inserting after the word “agreement” in line 26 on page 5, the words “and entered into before the first day of January, 1939.”

Amendment carried.

Moved by Mr. Dunning that sub-paragraph (ii) of paragraph (a) be amended by inserting after the word “agreement” in line 28 on page 5, the words “and entered into before the first day of January, 1936.”

Amendment carried.

Moved by Mr. Cleaver, that sub-paragraph (ii) of paragraph (a) be further amended by adding after the word “dollars” in line 30 on page 5, the words “for a single family house and twelve thousand dollars for a two family house.”

Amendment carried, and paragraph (a) as amended, carried.

Paragraphs (b) and (c) carried.

With respect to paragraph (d), Mr. Hill moved that the eighty per cent adjustment mentioned in line 3 on page 6, be raised to one hundred per cent.

On point of order, Mr. Tucker objected to Mr. Hill's motion on the ground that the eighty per cent adjustment was one of the fundamental principles of the bill, and that the Committee had no right to pass an amendment conflicting with one of the main principles of the bill as passed in the House on second reading.

It being then six o'clock, the Committee adjourned until to-morrow, Wednesday, May 31, at 11.15 a.m., without the question being put on Mr. Hill's motion.

Note.— The 1939 membership list of the Dominion Mortgage and Investments Association referred to in yesterday's evidence by Mr. Leonard, is shown in appendix to this day's proceedings.

R. ARSENAULT,

Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

May 30, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m. The Chairman, Mr. W. H. MOORE, presided.

The CHAIRMAN: Order, please. Mr. Leonard, have you a statement to make as to the desire of the companies to appear?

T. D'ARCY LEONARD, recalled.

The WITNESS: Mr. Chairman, Mr. Minister and members of the committee, after the suggestion that was made in the committee yesterday, that if any further witnesses on behalf of individual companies desired to appear before the committee, the committee was ready to hear them, I discussed that matter with those representatives of companies that are here in Ottawa, and I was asked to point out to you these circumstances: in the first place, in so far as any general submission on the principles or along the lines of the general effect of the bill is concerned, the submission made by any further members of the association would be a repetition of the statement I made yesterday, and that in so far as the position with respect to individual companies that such representative might be an officer of, that would not be a fair submission in several respects: it would not be fair to the committee, because there is such a variety of conditions and circumstances among the various companies and various classifications of companies that any conclusions that might be drawn from a situation resulting from the submission of one particular company as to its own particular situation would, undoubtedly, be misleading. It would not be fair in other respects, having in mind the responsibility of officers as to what information they have available at the present time and could make available to this committee to-day.

There was the very definite viewpoint I was asked to express to you that in so far as every bit of information that is in the possession of these companies that is relative to the bill, which the committee desires should be made available is concerned, the companies are prepared to give that; it is purely a question of method as to what might be and should be the fairest way in which that evidence would be put before this committee. To draw any proper conclusions from the standpoint of testimony of officers of individual companies, it is our submission to you that the only fair thing that could possibly be done would be to call representatives of practically every company in the organization, and as the result of that, possibly some comprehensive picture might be obtained. There is another method, and it is the one that has been adopted in the past and is, in our opinion, the fairest method from the standpoint of the companies, of their duty to their own shareholders and debenture holders, the best methods in the public interest, and the fairest to the members of the committee from the standpoint of arriving at any conclusion, and that method is through the Department of Insurance. I think you gentlemen are all aware of the fact that dominion incorporated life insurance companies, loan companies and trust companies are all subject to the provisions and rigid inspection of the Federal Department of Insurance and the Superintendent of Insurance, Mr. Finlayson. There is already on public record through the report of the superintendent, a great deal of information along the lines requested by some of the members of this committee yesterday dealing with

the companies. There is also available in the office of the superintendent of insurance further information represented by his examination and report upon the companies. In addition to that, he has the power and, in fact, without the power there is no doubt about the willingness of the companies and the ability of the superintendent, to obtain from every company under his jurisdiction every bit of information that any officer of a company could give to this committee. Practically the entire life insurance business is represented by the companies incorporated under the Dominion of Canada and under the jurisdiction of the superintendent of insurance, so that a comprehensive picture in so far as life insurance companies are concerned could thereby be given. As far as the loan companies and trust companies are affected, while dominion incorporations do not cover the field to the same degree as in the case of life insurance, they do cover to a degree sufficient for the purpose of this bill that any information available through the Department of Insurance as to the position of loan and trust companies would be sufficient for the purposes. In the past when this method has been adopted it has enabled not only a comprehensive picture to be presented by an officer who, I think, has the respect of everybody connected with him as an officer who does his duty in the public service—he has not only been able to deal with groups, but where necessary and where any typical company's position was needed to be shown, it could be shown as an example of A company or B company or C company, and the decision as to that would be a decision that he would make. On that account, Mr. Chairman, the decision we have reached is that the fairest method of getting any further evidence, other than that which I have given or other than that which I might give within my own information if asked by members, but particularly the information respecting the companies should come more properly through the superintendent of insurance in the manner I have suggested.

Mr. CLEAVER: Mr. Chairman, would the superintendent of insurance have information as to each of the different loan companies regarding the interest return on the year's business in their mortgages and the cost of the money during the corresponding period?

The WITNESS: Mr. Chairman, if I might answer Mr. Cleaver. That information would appear in the company returns.

Hon. Mr. CAHAN: I suggest that it is not a question of fairness or unfairness. We are sitting here as a committee and we desire all the information which may be necessary to render an opinion with regard to this bill being in the public interest, and if the department or the minister of finance in promoting this bill had deemed it expedient to produce Mr. Finlayson as a witness they would have produced him, and it may be the proper thing to hear Mr. Finlayson, but we may also decide to hear information from the different loan companies. I would like to ascertain from the companies or representative companies as to the proportion of their mortgage business that is in default as to the difficulties they have in arriving at voluntary settlements, agreements for settlements in regard to mortgages and as to the advisability in the public interest of the dominion government intervening to the extent that this bill proposes in an adjustment of those liabilities. The bill in my opinion is not necessary if satisfactory progress is being made by the individual companies in arranging voluntary settlements with themselves as mortgagees and the numerous mortgagors who are indebted to them. I do think that information from individual companies might be helpful, but as to whether or not that shall come before or after a presentation of the case by the superintendent of insurance is immaterial to me. I should like to be assured that we can call upon the officials of the companies for detailed explanations with regard to any issue that may arise.

[Mr. T. D'Arcy Leonard, K.C.]

The WITNESS: Mr. Chairman, in answer to Mr. Cahan, just taking that question, for example, with respect to the difficulty or not that companies may be having in arriving at voluntary settlements. If an officer of a member company were to answer a question to that effect with respect to his individual company an erroneous conclusion might be drawn, and the only way in which that question could properly be answered would be by having all the companies that might be members of the Central Mortgage Bank come in and say what their position with respect to that would be, or by the other method we suggest, namely, if Mr. Finlayson wants to ask the companies—

Hon. Mr. CAHAN: It is not Mr. Finlayson, it is this committee that wants the information.

The WITNESS: If this committee desires that the statements from the individual companies as to their own position be made to Mr. Finlayson or to someone else on behalf of the committee, and if whoever it may be produces the evidence to show that one company (A) is having difficulty and company (B), not having difficulty, is not on the record, I think it should be. It is the general result that should be on the record.

Mr. VIEN: Might we request Mr. Leonard to speak a little louder so we can hear back here?

Mr. LANDERYOU: Did you suggest a method whereby we might secure that information?

The WITNESS: By either one of those two methods. If you want witnesses from individual companies the only fair method is to proceed to call all the companies that might be considered in this matter and find out their general experience, or to pool that information through an intermediary and have it presented to this committee; and the suggestion I am making—and it is subject to whatever the committee might feel as to some other suggestion for a better method of pooling—but if it has been in the past with respect to the superintendent of insurance as to any particular matter that is within his own knowledge now, he could produce it, or as to any further information—

Mr. VIEN: We do not hear you very well, Mr. Leonard.

The WITNESS: I am sorry, sir. I was saying that the superintendent would obtain that information from the member companies in the same way or to the same effect that it would be given by the individual members only more expeditiously and in a fairer way.

By Mr. Landeryou:

Q. Has the superintendent of insurance all the facts in relation to the mortgage indebtedness owed to the companies?—A. Yes, in so far as dominion incorporated companies are concerned.

Hon. Mr. CAHAN: That is mere hearsay. After all, speaking for myself, I have no desire to inquire into the private affairs of any company. I recognize that each company may have certain information that is peculiarly its own and which it would not necessarily wish to divulge to a public committee such as this. But what I desire is to obtain a general view of the situation, and I suggest with deference that one or two of the members of your association, one of the leading insurance companies, one of the leading mortgage or loan companies, could give a general view of the situation if their particular business extends over a number of provinces.

Mr. THORSON: Which ones, Mr. Cahan, would you suggest?

Hon. Mr. CAHAN: I do not like to suggest. I think any one of the leading companies.

Mr. THORSON: Is not that the difficulty?

The WITNESS: Mr. Chairman, I think Mr. Thorson has hit on the difficulty. With all due respect to Mr. Cahan, I appreciate the information you would like to have; in fact, after consultation with those representing the companies here I think it would be the fairest method of getting what you desire.

By Hon. Mr. Cahan:

Q. What do you mean by "fair"?—A. To arrive at a conclusion as a result of the evidence, because I have had experience with fifty companies and there are no two companies in my opinion whose situations are so comparable that any fair conclusion can be drawn from the submission of any one of them. What I mean by a fair conclusion is a conclusion drawn as the result of a picture of one company which would be typical of a general picture.

Hon. Mr. CAHAN: I would submit, Mr. Chairman, that we should first have the superintendent of insurance but that by calling him as a witness in the first instance we will not be precluded from seeking other information if the committee deems it necessary as it proceeds.

Hon. Mr. DUNNING: If I might make a comment on the suggestion, I would have no objection, of course, to any officer under my jurisdiction being called. That goes without saying. But may I say that in so far as the superintendent of insurance is concerned, the information in his possession, which has been studied by the officers of the Department of Finance in connection with the preparation of this legislation, is all to be found in the publications of the superintendent. I have in my hand the report of loan and trust companies, and I can turn to a particular company because there is a publication with respect to each company, just as there is in the abstract, that bulky abstract which is published annually by the superintendent of insurance with respect to life insurance companies. This report says with respect to this particular company:—

First mortgages under which no legal proceedings have been taken—
\$49,000,000.

Mortgages under which legal proceedings have been taken and are still unsettled—\$453,000.

Amount secured by agreement of sale or purchase of property not subject to prior agreement.

Aggregate amount of sale property covered by such agreement—
\$6,003,000.

That is the type of information contained which the superintendent of insurance gets from these companies in order to carry out the duties resting upon him under the relevant statute, and he publishes it all in these blue books with respect to every company coming under dominion jurisdiction.

Mr. THORSON: All of which has been studied by the department preparatory to this bill being drafted.

Mr. TUCKER: And all of which is available to the members of this committee.

Hon. Mr. DUNNING: Quite. My submission is that the committee, with all due deference, I do not think should assume that it is the function of this committee to decide whether or not legislation of this character is necessary. The House of Commons has, by adopting the second reading, in my view, accepted the principle but has referred it to this committee in order that the working out of the principle may be most effectively done; and to spend our time going through blue books and calling officers responsible for the production of the blue books on the major question of the advisability of such legislation will, I think, keep us here for an interminable length of time and will not likely produce any more satisfactory results.

[Mr. T. D'Arcy Leonard, K.C.]

I should be very happy to arrange to have the superintendent of insurance here. Frankly, it did not occur to me as being a necessity, but if the committee desires his presence, all well and good from my point of view. But I do submit that we should not spend time endeavouring to decide whether or not a bill of this character, and embodying the general principles contained in it (to which I referred yesterday) should be enacted, but rather whether the bill now before us does in a practical manner carry out what the House of Commons decided, by accepting the principle on second reading, should be carried out.

Mr. LANDERYOU: The bill was accepted on second reading on the understanding that it would be referred to the Banking and Commerce committee for a full examination into the whole situation, as I understand it. I think the reason it went through second reading was simply because of the fact that it was going to be referred to this committee.

Hon. Mr. DUNNING: That is true in measure, but certainly no minister undertakes to refer a bill to committee in the expectation that that committee is going to determine on the major principles involved in it. I would much prefer to have the whole House of Commons debate the major principles rather than have them debated in committee. Certainly I wanted the bill thoroughly examined in this committee, but examined as to its terms and as to the means proposed to be adopted to effect the object sought. I did not take it that the House of Commons was being transferred here for a general debate on the principle, and I do not think the committee had that view.

Mr. COLDWELL: I think the Minister of Finance is right when he says that we adopted the principle in the house. He is also right when he says it is our duty to examine the bill to see if the clauses of the bill meet the situation.

It seems to me that the various parts of Canada have different problems in this connection. I paid particular attention yesterday to Mr. Leonard when he stated that Saskatchewan had a particularly acute problem; also that there is data which might assist both the companies and the government in arriving at a basis. That is why I suggested yesterday that it might be well to have some one representing, as it were, the debtor interests of the province of Saskatchewan. I do not think the superintendent of insurance could do that. As the Minister of Finance points out, his reports are all available to us in the blue books. Perhaps the same may be said of others but not of our own government blue books.

Hon. Mr. DUNNING: Yes, they have all been studied, Professor Hope and all the rest.

Mr. COLDWELL: Professor Hope might be called before this committee in order to give us a picture. If we are going to hear witnesses at all, I think we should have witnesses representing the various interests. We have the mortgage companies represented this morning, and perhaps there are others; I do not know. But it seems to me we should also have, if we are going to hear witnesses, at least one witness who has the confidence of the people in the western provinces, and I think Professor Hope has that confidence and should be called if we are going to call witnesses.

Mr. TUCKER: Mr. Chairman, in regard to this idea that the only person who is competent to pass upon the debtor interests is somebody we might call in as a witness, I disagree with that view very emphatically. I certainly consider that I am just as well able to represent the debtor interests in the province of Saskatchewan as anyone who can be brought before this committee. I consider myself just as well able to defend their interests.

So far as different interests in the different provinces of Canada are concerned, the various members of this committee and of the parliament of Canada were elected by the people of Canada to represent those interests in

this parliament and in these committees, and we do not need to call for experts all over the country to decide what should be done by the parliament of Canada for the people of Canada. We are the people elected to do that sort of thing, and, as the Minister of Finance has pointed out, parliament with its knowledge of the needs of the situation has decided that this bill should go through. As far as I am concerned we might much better spend our time considering the details of the bill than by threshing over whether the bill is needed or not. I do not think there is a member of this committee who does not realize that this bill is needed to take a load off the backs of debtors who have too big a load to carry under present conditions.

Mr. PLAXTON: All over the country.

Mr. TUCKER: Yes, all over the country. There has been the suggestion from the honourable member for St. Lawrence-St. George, Mr. Cahan, that these companies are able to make satisfactory adjustments, and that this bill is not necessary. I disagree with that view entirely. I realize that satisfactory adjustments may be made from the standpoint of the companies, but what we are considering is whether they are satisfactory from the standpoint of the general public. Now, Mr. Chairman, I suggest that we proceed at once to consider the bill clause by clause. All the time we can possibly afford to give it can be well spent in improving and making this bill apply in a wider field than I think it applies at present. There are one or two things I should like to suggest so that the Minister of Finance may have them in mind. I suggest that there should be something done in regard to second and third mortgages because if you write down the first mortgage it improves the position of the second and third mortgagees rather than the debtors.

Then I suggest it should be applied, as was suggested yesterday, to land companies and railroad companies.

I suggest it should be applied at least in regard to the adjusting feature to different provinces that have had the loaning companies act. It seems to me that these things raise features—

Hon. Mr. DUNNING: What was your last suggestion—"the different provinces"?

Mr. TUCKER: That have had the loaning companies act. For example, the Saskatchewan government had a loaning Act—

Hon. Mr. DUNNING: You mean government farm loan boards?

Mr. TUCKER: Yes. It seems to me that these things raise problems that are so intricate that it will take all the time we can possibly afford before parliament adjourns to deal adequately with them instead of trying to re-hash stuff that is in these blue books and which every member, if he wants to read them, can read them.

Mr. THORSON: Mr. Chairman, I agree with Mr. Tucker generally. Mr. Cahan's suggestion that one of the purposes of calling representatives of the companies would be to obtain their opinion as to the advisability of the legislation. I submit, with deference to Mr. Cahan, that that is an erroneous view.

Hon. Mr. CAHAN: I did not suggest that. I suggested that we should have their opinion with respect to the possibility of voluntary adjustments being made between debtors and creditors.

Mr. THORSON: I understood Mr. Cahan to say that he wanted their opinion as to the advisability of the legislation.

Hon. Mr. CAHAN: I do not think I said that.

Mr. THORSON: Then I stand corrected.

The question of advisability is for parliament, and parliament has passed upon the advisability of the legislation. It has passed upon the principles in

[Mr. T. D'Arcy Leonard, K.C.]

the bill, and this bill is sent to the committee for the purpose of the committee approving the workability of the bill so that the principle can be best carried into effect.

Now, it has been suggested to us that one of the difficulties that would be met in working out the bill would be in determining a basis of valuation. If there are suggestions to be made by the companies as to what should be the basis of the valuation, that might be taken into account when dealing with the various clauses of the bill. For example, the important clause of the bill is the one which deals with the regulating powers. There will be a tremendous amount of work required to be done in order to frame the regulations. I have no doubt that the officers of the department will be in continuous contact with the insurance companies, the life insurance companies and the loan and trust companies, in working out the regulations.

It might be well, for example, and I say this by way of illustration only, we add to section 31 some provision relating to the subject of valuation; that regulations might be made regarding the subject of valuation. There is a clause there relating to the manner in which the appraisal committee shall perform its duties. That clause, for example, might be amplified in order to make specific provision for regulations relating to the subject of valuation. That is the kind of thing that this committee should study—

MR. TUCKER: Hear, hear.

MR. THORSON: —not the principle of the bill. We will determine the principle of the bill, indeed, we have already determined the principle of the bill. We have accepted the principle of the bill, and it is no function of this committee to change the inherent principles of the bill. The purpose of this committee is to work out the principles so that we shall have a workable statute when we report it back to the house. The principle of the bill has been fixed. The advisability of the legislation has been settled and I entirely agree with Mr. Tucker that the best thing we can do now is to proceed to the sections of the bill—

HON. MR. DUNNING: Hear, hear.

MR. THORSON: —and discharge the duties which were imposed upon us; that is, to improve the bill, if it requires improvement, so that the principles embodied in the bill can be carried into effect. If a motion is required I would be glad to move that we now proceed to a consideration of the sections of the bill.

HON. MR. STEVENS: Mr. Chairman, in part I think Mr. Thorson is right; but it must be borne in mind that this committee is now on the question of the preamble, and if the preamble does not pass then the bill is not reported. That is within the competence of the committee. The custom or the practice in parliamentary committees of this kind is to spend such time as may be deemed necessary on the preamble and then proceed to vote on it, which can of course always be forced by any member who desires to do so if the committee approves, then proceed with the details of the bill.

But I think the point raised by Mr. Cahan has merit. There are certain sections in the bill, sections 15 and 16 in particular, which require considerable information before we can give an intelligent opinion regarding them.

I should like to make a suggestion, Mr. Chairman, to the Minister of Finance and his staff which may be helpful in this respect. It is quite true, as the minister points out, that in the insurance reports and the trust and loan reports very complete data is set forth regarding the condition of the companies. I would suggest that a composite statement be made of this report. It would not take long; it could be done by to-morrow quite readily. I would suggest that

that composite statement be placed before the members in tabulated form. That would enable us to judge intelligently the points raised by Mr. Cahan, and which I think I mentioned yesterday also.

Hon. Mr. DUNNING: I think it is all here in composite form.

Hon. Mr. STEVENS: In composite form? Then, lay the table before us. Here is the point which has occurred to Mr. Cahan and myself and I think it is also in the minds of some others: with regard to companies that have a substantial portion of their mortgages in excellent shape, requiring no adjustment at all, such companies may be definitely handicapped by this bill as it is at present. We should like to know what proportion there is, speaking by and large, in default. I do not agree with the idea that we should initiate here an inquisitorial investigation of individual companies, not at all. I know that my friend Mr. Cahan has not that in mind. What we wish to do is to secure the information without taking individual companies and subjecting them to public scrutiny at this time, because there is no reason for that. If this information could be filed in a form that will cover the question that has been raised, I think it would be helpful. Now, that question will not arise until we come to section 17 of the bill.

Hon. Mr. DUNNING: It would not be needed until then.

Hon. Mr. STEVENS: It will not arise until that point. With regard to Mr. Coldwell's suggestion, it is desirable, if we had unlimited time and if this bill had been before us two months ago, as I think it should have been. We could then have invited Professor Hope or anyone else to come down and give us a dissertation on it; but there are numerous reports of Professor Hope and others relating to conditions and we have that information.

Mr. VIEN: Are these reports available?

Hon. Mr. DUNNING: We have odd copies; we have not them for general distribution but we have our own reports.

Hon. Mr. STEVENS: Members who are interested have reports.

Mr. THORSON: Of what?

Hon. Mr. STEVENS: Of Professor Hope's report.

Mr. THORSON: It is in the marketing conference report.

Hon. Mr. STEVENS: There is nothing that Professor Hope can add to the very elaborate report that he has already made.

Hon. Mr. DUNNING: May I say that Professor Hope, like all the rest of us, can only generalize on values.

Hon. Mr. STEVENS: The point I was coming to is this: if we wish to proceed with some degree of expedition obviously we cannot wait until we call in individuals from different parts of the country to offer information; so I suggest, Mr. Chairman, that we should satisfy the point that has been raised by compilation of the data already published in the annual statements which, I think, will be quite as complete as if you spent hours going over this question. With that compilation before us we could intelligently analyse section 16 when we come to it.

Hon. Mr. DUNNING: Yes. Mr. Chairman, if I might—

Mr. Ross: I just want to say one thing. Might it not be advisable, when we are studying the sections of the bill, as we go through them, to have the superintendent of insurance here to answer questions which may come up as time goes on? I quite agree with Mr. Stevens that this bill requires a great deal of study. I think that we should have had it before us for a long time, for two months or so. I think it is comparable to the formation of the Bank of Canada. I think it is asking a great deal to form an institution of this

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kind in such a short time. I agree with my friend in connection with the information, but I do think that we should have the superintendent here to answer questions. He is more familiar with these matters than anybody else.

Hon. Mr. DUNNING: If I may say a word, Mr. Chairman, in reply, certainly we will make available the superintendent of insurance. I appreciate the force of Mr. Stevens' suggestion but may I point out this in that connection, and on the preamble, that in my study of the matter I found it quite impossible to place any reliance upon bulking the figures of all companies together and striking the average, for the reason that the average did not correctly represent the position of any one company, and each single company will of necessity determine the question as to whether it will or will not become a member on the basis of the impact of the legislation on its individual position. I found that very difficult, Mr. Stevens, in sizing up the situation. It was that, in fact, which brought me to suggest to the government the form which the legislation now takes. I will be perfectly frank and say this is not the first attempt by any manner of means to get some means of approach to this great question; and the approach is, as I said yesterday. We have determined the approach on the basis of bringing every mortgage down within the two clauses mentioned to not more than 80 per cent of the valuation of the property. Now, the question that every individual company has, having regard to its individual situation, is, can it stand that, having regard to such compensation as the bill provides. From the standpoint of the debtor, as I said yesterday, he is that much ahead at any rate if it goes through, and his position is improved to that extent. The second point is that each company will have to look at it individually, and no bulking of figures will really help us in arriving at a judgment as to the extent of sacrifice on the part of companies which will be involved in writing off interest in excess of two years.

Now, there are individual cases where that would be very heavy and there are others where it would not be heavy, dependent somewhat upon the relative volume of business of the companies in parts of the country which have been more adversely affected by the last ten years of depression than others.

Then the third question is, can we justifiably ask the companies entering this scheme to re-adjust their mortgages so far as their future term is concerned to a 5 per cent amortized basis? It seems to me that expert evidence will not help us there. Professor Hope can tell us, for instance, as he has in his publications, the basis of the possible valuation of farm lands. Now, as Mr. Stevens says, that arises on the section dealing with our valuation machinery, the importance of which I acknowledge, the difficulties of which I acknowledge, but I do say that it is not a question of determining what Hope says or what anybody else says, but putting into law machinery which will, in our judgment, enable fair valuations to be made. We cannot, for instance, put in every class of soil that Hope deals with in Saskatchewan and say in such a district so-and-so shall be the best valuation. It would not work that way; but we can ensure that the basis of valuation put into this statute shall be such as to ensure fairness, and that is about as far as we can go, if we heard all the experts in creation.

Now, in so far as the superintendent of insurance is concerned, as I said, I am quite willing to have him here answering questions; but I am quite sure that the superintendent of insurance's answers with respect to an individual company will be confined within the four corners of what the statute makes that company give him by way of information, and that is exactly what he puts in his annual report with respect to every company. The insurance report is on the table there in front of my friend from Toronto. That gives an extract with respect to every insurance company. It does the same thing with respect to loan and trust companies, and in the earlier pages there are numerous tables, classifications of mortgages in the bulk, as referred to by Mr. Stevens.

I am quite willing to arrange to have the superintendent of insurance here this afternoon, and I think having regard to that, that we can now properly proceed to consideration of the clauses of the bill. Obviously the difficulties of valuation must be faced. As Mr. Stevens says, when we come to that section fair valuations are vital.

Mr. LANDERYOU: There is that other point, that the conditions and circumstances that affect one company will not affect another company.

Hon. Mr. DUNNING: But nothing we can do by way of legislation here can possibly equalize the positions of the companies.

Mr. LANDERYOU: But we are paying 50 per cent of the reduction that they have to take—50 per cent of the write-off is charged to the treasury. Some of those companies may not be in need of it as much as the others. Unless we have the information we might be working an injustice on one and justice on another.

The CHAIRMAN: Shall the preamble carry?

Mr. CLEAVER: Mr. Chairman, there are two matters which I would like to bring to the attention of the minister at this time because it may require some looking up of material. The first is—I agree entirely with what Mr. Tucker has said, but I think there is one thing he has overlooked entirely—I intend to support the bill, certainly, but there is one thing he has overlooked and it is that in so far as loan companies are concerned this bill is optional, it is not compulsory, it is just permissive. Now, does it not necessarily follow that the rates set up by the bill—I am referring now to new business—that the rates set up by the bill must be such as will attract the loan companies to the Act and encourage them to come under it. Now, if the rates are not adequate the loan companies will not come under the Act and the Act will be entirely inoperative. I took the trouble overnight to check up as to one company, and as to this company—I will not give the name of it; my figures may not be accurate, but I believe they are substantially correct—I found that over a 15-year period the interest returns on all of their mortgage investments amounted to 7·02 per cent. As to that same company I found that the money which they were loaning cost them 4·85 per cent. In other words they had an operating spread of 2·17 per cent. And this is the rest of the picture: during that 15-year period their reserves have been depleted just over \$3,000,000. Now, if you set aside a yearly amount sufficient to overcome that reserve loss set up on a 15-year basis it would take ·594 per cent; on a 10-year basis it would take ·783 per cent. It is rather obvious to me that if we are to expect the loan companies to cover the entire field of profitable loans as well as some marginal loans the rate must be higher than a 2 per cent spread.

Hon. Mr. DUNNING: We will come to that in another section.

Mr. CLEAVER: Yes, I know that. I promise not to be long. We have this year passed legislation whereby we have driven the loan sharks out of business. The loan sharks will have money seeking investment. I would hate to see this loan shark money driven into the mining districts of northern Ontario and into the western provinces or driven into places where it is not as profitable for the loan companies to do business as in the large urban centres like the city of Toronto. My suggestion, Mr. Minister, is this, that we should ask our superintendent of insurance to compile a summary of five or six of the leading loan companies so that this committee may have available the interest yield which they have been receiving and the cost of the money to the loan companies, and also information as to what, if any, losses in depreciation and reserve have taken place.

The other point I want to mention—I might say that I expect to meet with very violent opposition but I am going to bring it out anyway—I do not see why it is fair for us to single out company mortgagees, and mortgagors borrowing from companies, and say to those individuals: we will give a government

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subsidy of 50 per cent of the amount written off. For the life of me I cannot see why if we would eliminate one or two provisions of the Act—I refer especially to the provision providing for a government loan on a reduced mortgage—if that provision is limited I do not see why the Act could not be made to apply to private investors and to mortgagors borrowing money from private investors. That is, as to private investors I can readily see that the operation of the Act must be restricted to the 50 per cent subsidy, and if it is restricted to that as to all mortgagees and mortgagors who voluntarily agree on a composition, I do not see why the Dominion of Canada should not make the same return to these groups of people as to the loan companies and the borrowers from the loan companies.

Mr. LANDERYOU: Mr. Chairman, this bill in my opinion, is an attempt to centralize power and to interfere with the powers and jurisdiction of the provinces over mortgage indebtedness. I would like to direct a question to Mr. Leonard.

Mr. TUCKER: Mr. Chairman, there is a motion by Mr. Thorson that we should proceed to consider the sections. I think that motion should be put.

Mr. LANDERYOU: I do not understand why I cannot ask a question.

The CHAIRMAN: It is just a question he wishes to ask.

Mr. LANDERYOU: Yes.

By Mr. Landeryou:

Q. Mr. Leonard, with regard to the companies you represent, are they satisfied with the debt legislation of western Canada, particularly the province of Alberta?—A. They are not, Mr. Landeryou.

Q. They are not. That is the question I wanted to ask. And I wanted to ask a further question as to whether they are satisfied with the general principle, the general set-up, in this legislation?—A. I think, Mr. Thorson probably put that better than I could. We have not considered this as being a matter upon which we should make a submission to you as to the principle involved. That is a matter for this committee—for parliament to decide—and it is also a matter for each individual company as and when a membership agreement is presented to it to decide whether or not it will come in under the principle involved in this bill. Therefore, the submission we are making to you is that, you having made it a voluntary basis as to whether any company does or does not come in under this bill, you having established what the principle may be, we simply point out to you the particular difficulties which are in the way of agreements.

Q. There is considerable difficulty in getting co-operation of these large companies, large loan companies? I know in the province of Alberta there is considerable difficulty in getting the co-operation of these large companies and other large creditors in the reduction of interest and in the settlement of debt in that province, and if the federal government has no more success in getting their co-operation than the province of Alberta has had, then we can hope for very little success for this legislation.

Mr. DONNELLY: We had success in Saskatchewan.

Mr. COLDWELL: Mr. Chairman, on a point of order. If we are going to hear representatives of the creditor groups I think we ought also to call representatives of the debtor groups. If we are to hear no witnesses as we proceed with the bill, let us proceed. But I do say that if we are to question witnesses representing one side—I do not say this personally at all—then I say we ought to question somebody who is competent to speak from the debtor

point of view. However, I think Mr. Tuckers statement is correct and that the members of this committee can speak for both debtor and creditor points of view.

The CHAIRMAN: Does section 1 carry?

(Carried.)

Mr. LANDERYOU: No.

Hon. Mr. CAHAN: Mr. Chairman, I should like to present a matter for the consideration of the minister of finance who has charge of this bill. I am drawing to his attention the use of the word "bank." I suggest that using the word "bank" in this connection is not only a misnomer but is likely to lead to grave misconception and misunderstanding in the public mind. In the Dominion of Canada we have used the word "bank" and "banking" to signify a certain class of corporations and a certain particular class of business. I suggest that inasmuch as we have had a bank defined in our Bank Act which precludes the making of loans on real estate, on the security of real estate, it is not wise, I suggest, to depart from that practice. Mortgage bank is a term unknown in Canadian legislation hitherto. Mortgage bank, I think, is a term that was introduced in Germany by German legislation. I do not think it has ever been introduced in legislation in the United Kingdom or in any member of the British commonwealth, and I therefore suggest—

The CHAIRMAN: —by way of amendment, Mr. Cahan?

Hon. Mr. CAHAN: I am going to propose—rather I was making a suggestion in the hope that the minister might agree to an amendment. I realize that any amendment moved by me in opposition to the views of the minister has little chance in this committee.

Mr. THORSON: What word would you suggest in substitution?

Hon. Mr. CAHAN: I do not like the word "corporation" but if you would call it the central mortgage corporation it would be more appropriate than central mortgage bank, and would tend to differentiate in the public mind the undertaking of this institution and the business generally of the institution from that of the chartered banks and of the central Bank of Canada. I make that suggestion in the hope that the minister may give it favourable consideration, because I do not wish to appear to be antagonistic to his personal views of what the name should be.

Hon. Mr. DUNNING: Mr. Cahan made the suggestion in the House of Commons, and because of the source from which it came I did go into the matter with some care. It may be said that a rose by any other name would smell as sweet, but we do want an appropriate name for the institution which we are bringing into being and which will be important in the affairs of Canada for a considerable time to come, we hope. I have difficulty, Mr. Cahan, in finding another word which would not, from my point of view, carry objections. To call this a mortgage corporation is incorrect, because it is not becoming in any sense a mortgagee as does an ordinary mortgage corporation. Its powers consist in the ability to refinance mortgage institutions. In other words, it performs for mortgage institutions a banking facility.

Some Hon. MEMBERS: That is right.

Hon. Mr. DUNNING: I could not find a word—"corporation" would not do; it would connote an entirely wrong appreciation of the function, and frankly I was unable to find a word which more nearly expressed the functions of this peculiar institution than does the words "mortgage bank." "Bank" alone would not do. "Mortgage loan" would not do, obviously.

Hon. Mr. STEVENS: How would it do to have such an expression as "central mortgage adjustments association," or if you insist upon the word "bank," "central mortgage rediscount bank?"

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Hon. Mr. DUNNING: I might say that in the first draft that was made we did use the word "rediscount."

Mr. THORSON: But it is not a rediscount bank.

Hon. Mr. DUNNING: It is not a rediscount institution.

Mr. THORSON: It is not a mortgage loan that is going to be rediscounted.

Hon. Mr. DUNNING: No.

Hon. Mr. STEVENS: Indirectly.

Hon. Mr. DUNNING: No. The dealings of the Central Mortgage Bank with the members will be on the basis of evidences of debt secured by the assets of the corporation which, of course, include mortgages.

Mr. THORSON: That is why the words "mortgage bank"—

Hon. Mr. CAHAN: Suppose we say "central mortgage credit company?"

Mr. TAYLOR: I cannot see anything wrong with the word "bank." We have savings banks and commercial banks, and there is no reason why we should not have a mortgage bank.

Mr. THORSON: The word "bank" is all right, but this is not strictly a mortgage bank.

The CHAIRMAN: Shall clause 1 carry?

(carried).

The CHAIRMAN: Clause 2?

Hon. Mr. STEVENS: Mr. Chairman, in subsection (i): "'Mortgage' includes a hypothec and an agreement for sale." Now, I sense some danger in this mortgage bank being given too wide powers in dealing with agreements for sale, and, therefore, it strikes me that it is a mistake to include agreements for sale as mortgages because they are not mortgages. They are rather a dangerous class of security for an institution of this kind to get mixed up with. If we are going to set up powers for loan companies with large portfolios of agreements for sale we want to know it before the bill passes. Consequently, I would not like to see the term "mortgage" changed from its standard. That is, it is a mortgage debt, a charge against the property. I suggest that if we do wish to include agreements for sale it should be defined separately and distinctly so that we will know what it is.

Mr. Ross (St. Paul's): I suggest there should be a definition of "farm mortgage" and "non farm mortgage." I think you are going to have some trouble there.

Hon. Mr. DUNNING: Mr. Stevens has raised a very important point which gives some difficulty. It was very difficult in contemplating legislation of this kind to contemplate barring agreements for sale, and it becomes more difficult, having in mind suggestions of members in this committee, that certain large land companies will be brought within the scope of it. For instance, the suggestion was made yesterday that the Canadian Pacific Railway should somehow be brought within the scope of it. That question is difficult to deal with, but obviously agreements for sale constitute the great bulk of the business of that corporation.

Hon. Mr. STEVENS: It should be distinct from mortgage.

Hon. Mr. DUNNING: That is one point where I did not follow you: as to what would be the advantage of separately defining an agreement for sale; we only put it in there as a mortgage in order to avoid repeating everywhere through the Act "mortgage and/or agreement for sale."

Hon. Mr. CAHAN: I do not think—an agreement for sale which includes a charge or hypothec upon immovable property might be included as a mortgage, but I would suggest that mortgage includes hypothec, while I understand it is only applied to real estate or immovable property.

Hon. Mr. DUNNING: Real estate, yes.

Hon. Mr. CAHAN: Well, it should be so restricted to real estate or immovable property as we use the term in the province of Quebec, and it should include not only hypothec but any charge—the mortgage is a charge, a hypothec is a charge, but it should include a charge of hypothec—

Mr. THORSON: Or encumbrance.

Hon. Mr. CAHAN: That is not a proper term.

Mr. THORSON: We use it in the province of Manitoba, I beg your pardon.

Hon. Mr. CAHAN: Encumbrance is a charge. A charge is the specific term used in all countries that have adopted the English—

Mr. THORSON: We use the term "encumbrance" as a separate term from the mortgage. It is a well-known term.

Hon. Mr. CAHAN: If we do that, a charge should be included, a hypothec should be included; but in so far as an agreement for sale constitutes a charge or hypothec or encumbrance, if that term is to be adopted upon real or immovable property then it is properly included; but what is here would include a bill of sale or mortgage upon personal property.

Hon. Mr. DUNNING: We do not want to include that.

Hon. Mr. CAHAN: We have not restricted it to real estate or immovable property.

Hon. Mr. DUNNING: I wonder if the committee would agree to permit me two privileges, one that of sitting down and the other of getting the help of the deputy minister with respect to matters of draftsmanship as they arise. It will ease the burden upon me, if the committee will be so good as to agree with that.

Hon. Mr. CAHAN: Certainly.

Hon. Mr. DUNNING: Now, the point raised by Mr. Cahan may have considerable legal importance, and may I suggest too that the legal importance of it varies in accordance to the law and practice of various provinces. There are strange terms used in some parts of Canada under provincial law compared with terms used in other parts, and it was because of that that in 1931 we gave rather wide powers of definition to the Governor in Council in order to try to meet all of the varied conditions which exist under provincial law in the various provinces. That, I know, does not dispose wholly of Mr. Cahan's point.

Mr. THORSON: It might be a mistake in a definition section to broaden the definition of mortgage to include charges or encumbrances generally; it might be a definite mistake to do that because there are certain charges upon land that are not contemplated by this legislation, and that I think is the sound justification for section 31, the regulating section, which gives the Governor in Council power by regulation to define further for the purposes of this Act such things as hypothec and mortgage. I think it would be much better in view of the fact that section 31 contains the regulating power for further definition, to avoid the mistake of extending the term "mortgage" generally to cover what we ordinarily understand by the term mortgage and also cover the word "charge" and the word "encumbrance" because charge and encumbrance might cover a multitude of transactions that are not normally and ordinarily mortgage transactions.

Hon. Mr. DUNNING: But I am concerned about Mr. Cahan's point that the definition as laid down here might include charges on personal property.

Hon. Mr. CAHAN: It does.

Mr. TUCKER: All you need do is simply add "of land."

Mr. THORSON: I submit you do not need that in view of section 31.

[Mr. T. D'Arcy Leonard, K.C.]

Mr. CLEAVER: Would it overcome the difficulty if we were to delete subsection (i) entirely? Is there any need for it in view of the flexible powers given under 31?

Hon. Mr. DUNNING: We have referred to mortgage all through the bill.

Mr. PLAXTON: I think it must be appreciated that this Act contemplates dealing only with lending institutions who deal in securities affecting land; and any suggestion that this might affect a bill of sale or a chattel mortgage is entirely out of the question.

Hon. Mr. CAHAN: The loan companies deal with chattel mortgages.

Mr. THORSON: I think it is all right as it is.

Hon. Mr. DUNNING: Don't you think that section 31 gives ample power to avoid the difficulty you speak of?

Hon. Mr. CAHAN: It gives ample power to avoid it, but it gives ample power to extend it—

Hon. Mr. DUNNING: Oh, we do not want to do that.

Hon. Mr. CAHAN:—so as to include all sorts of conditions of personal property. I am suggesting that this word "mortgage" should here be restricted to a mortgage because I am more accustomed to the word "charge" under the English laws, and mortgage is a charge; but it may be a charge on real or personal property. I suggest that "mortgage" here, whatever you say about it, should be restricted to charges or hypothecs, and I understand the point with regard to land, real property.

Hon. Mr. DUNNING: Would this meet your point: "Mortgage" includes a hypothec and an agreement for sale of real property; add the words "of real property."

Mr. MACDONALD: That would not exclude a mortgage of personal property. I think it would have to set forth definitely that the word "mortgage" means only a mortgage on land and includes hypothec of land or any agreement for sale of land. The word "land" has to come in as being restricted to land.

Hon. Mr. DUNNING: When you say "land," does that include the house on the land?

Mr. MACDONALD: Oh, yes; the real property. I would not use the word "land."

Hon. Mr. CAHAN: Or "immovable."

Hon. Mr. DUNNING: We have a lot of lawyers on this committee.

Mr. THORSON: Why not let subsection (i) stand.

Hon. Mr. DUNNING: I was going to make a suggestion that we now have enough on the record to see what the points involved are, and if we could agree to pass the section subject to subsection (i) standing, it could be redrafted to meet the objection.

Mr. TUCKER: Mr. Cahan is objecting to the words "agreements for sale" being included.

Hon. Mr. CAHAN: No, not if they involve what I understand to be a lien or charge or hypothec or encumbrance upon real property.

The CHAIRMAN: Section 2 is carried with the exception of the subsection (i) which stands.

Section 3, shall it carry?

(Carried).

Shall section 4 carry?

Mr. TAYLOR (Nanaimo): Before leaving section 2, "member company." That was never discussed. Is the membership to be entirely confined to those loan companies, trust companies and insurance companies?

Hon. Mr. DUNNING: I think, in view of the suggestion made yesterday about land companies, no one here would desire to exclude land companies such as the Canadian Pacific or the Hudson Bay company, who have large dealings in land; but I had some difficulty in finding a definition which would confine it to corporations who have had, shall I say, a major interest problem and not to bring within its scope institutions which have merely an incidental land interest. I suggest for the present that (g) as well as (i) should be permitted to stand.

Mr. THORSON: In the light of that suggestion, might we also consider whether we might include under section 31 the term "member company" as one of the terms that might be defined by regulation?

Hon. Mr. DUNNING: We will take a note of that. Subsections "(g)" and "(i)" stand.

The CHAIRMAN: Mr. Cahan, have you a statement to make? Are you asking that sections 3 or 4 should stand? Is 3 carried?

Carried.

On section 4.

Carried.

On section 5.

Hon. Mr. STEVENS: Mr. Chairman, I do not know what my colleagues on the committee will think of my position on what I am going to say. I want to make it clear that there is not the remotest reflection on the governor of the Bank of Canada in what I say, because I think very very highly of him; but I do not think that we should impose upon the governor of the Bank of Canada the duty of being governor of this bank.

Mr. MACDONALD: He won't have to appear before this committee so much.

Hon. Mr. STEVENS: He may be here very much more frequently. In the first place I think the governor of the Bank of Canada has all he can possibly attend to in his duties with the Bank of Canada. These duties are extremely onerous and very important. He has discharged those duties with singular ability but it does not follow that a banker is the proper type of person to have as head of a great mortgage bank.

Mr. THORSON: He is more than a banker in the ordinary sense.

Hon. Mr. STEVENS: The governor of the Bank of Canada is more; he is, I think, one of the best economists in the country. I believe that from the experience that we have gained in the last few weeks—those of us who have attended the committee, by the way. I am not reflecting at all on the governor of the Bank of Canada. I think it is a mistake to make him governor of the Central Mortgage Bank. I think probably it would be a good idea to have the deputy governor of the Bank of Canada a member of the board of directors but I think the governor of this institution—and I think the minister has in mind a managing head—should be probably the best and most experienced man in the mortgage loan business that you can possibly get, because it is a definite and distinct line of business. For instance, it does not follow that the head of a trust company would be a good head of a life insurance company. There is a distinction in the business, and there is no reflection on one to say that he is not fitted for the other by virtue of his training. I think myself, Mr. Chairman, that it is a mistake to make the governor of the Bank of Canada the governor of this institution, and the deputy governor of the Bank of Canada the deputy governor of this institution. The minister may have some explanation for it, but I feel very strongly on the point and urge consideration of it.

Mr. MACDONALD: Is there any manager?

Hon. Mr. STEVENS: It would not make any difference to my point if there were. The governor of the institution is the head. He is the man who will direct

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the policy and it will be dominated by him. I will use the term in regard to all the ramifications of the incoming member companies and so on. That will also apply to the nature of their business, the question of appraisals and adjustments, all the psychology of the thing will be more or less subject to the governor.

Hon. Mr. CAHAN: A full job for one man.

Hon. Mr. STEVENS: Yes, and an important job.

Mr. TAYLOR: I am disposed to view that somewhat differently. I think all those responsibilities should lie in the manager along with the board; but I am of the opinion that this institution should be definitely tied in with the central Bank of Canada as it is set up. It should have one supreme head. If the work is going to be too onerous, from what I know of the gentleman, he will be the first one to point out that he wants some assistance. I feel that this is a matter that should be tied in with the central bank.

Hon. Mr. DUNNING: I will express my view when members of the committee desire it.

Mr. THORSON: We should like to have it.

Hon. Mr. DUNNING: I need not tell the committee how highly I regard the abilities of the governor of the Bank of Canada and the manner in which he is discharging his function. The same is true of my appreciation of the organization he has built around him. I am very anxious that there should be the closest possible tie between the Central Mortgage Bank and the central Bank of Canada, because as sittings of this committee have demonstrated, more and more the Bank of Canada will become the medium through which this house will receive accurate information respecting the economy of Canada generally. I think perhaps the members of the committee would be the first to agree with me that during the length of time that the bank has been in existence through the research point of view it has made available information to a degree and in a manner which has never before been available to this parliament.

Mr. CLEAVER: Hear, hear.

Hon. Mr. DUNNING: Having said that, there is another point which I deem of some importance. We need a first class mortgage man as active managing head of the operations of this institution; but because of the fact that the institution is a refinancing institution and not a mortgage institution as such, we need to tie in what I will call the banking mentality with the mortgage administrative mentality, and I could not conceive of any governmental agency in which this parliament would feel more confidence as having control of the broad policies of this new institution to a greater degree than the Bank of Canada. It will add to the responsibilities of the governor because he does not take work in any nominal sense; and I think it is of the utmost importance that our Bank of Canada should know more about the mortgage business of Canada than is available to it now.

Mr. THORSON: It is part of the debt structure.

Hon. Mr. DUNNING: Particularly when, through the medium of refinancing operations we need to have a definite banking connection with the mortgage business. These were the ideas which were in my mind. I did not expect, and do not expect, that the governor of the bank will give day to day attention to the detailed operation of this institution in the same manner as he does to the central bank, because he will have in this case a chief executive who, I hope, will have the highest possible working knowledge of the details of that field of operation. But I do deem it of the greatest importance to have the whole thing headed up with our central governmental financing institution. That, I think, covers my views on it.

Mr. PLAXTON: I do think, that the description, "chief executive officer" is not describing correctly his true position in the sense of administering the affairs from day to day. My objection may be only a hair-splitting objection.

Hon. Mr. CAHAN: Mr. Chairman, in view of what the minister has stated, I suppose it is futile to argue the question further, but I do think that while there may be a close connection with regard to the credit operations between the central Bank of Canada and this Central Mortgage Bank, they should be constituted as separate and distinct organizations and there should be no confusion in the public mind as to the undertaking and business of each of them being separate and distinct.

Hon. Mr. DUNNING: Agreed.

Hon. Mr. CAHAN: I have no objection to the central bank being represented on the directorate of the institution, no more than I have objection to the deputy minister of finance being on that board, because that gives the minister a very much better facility for observing the function of the institution. But I do not think that the assistant deputy governor of the Bank of Canada should be the assistant deputy governor of the Central Mortgage Bank, and I think that the so-called manager or officer to be appointed to conduct the office of manager should be a man who is the head of the institution, and he should be the directing head and should not be controlled by the representation on the board which is given to the central Bank of Canada. I think that we have no provision in this bill for any office of manager, and I think—

Hon. Mr. STEVENS: There is none anywhere in the bill.

Hon. Mr. CAHAN: And I certainly think that for the purpose of enabling the governor of the central bank to become cognizant of the business and operations of the Central Mortgage Bank, for the directorate of the central bank to keep intimate and in close touch with the operation of the Central Mortgage Bank, it does not necessitate imposing upon the governor of the central bank a position which in itself involves not only supervision but direction and to a large extent control of the operations. I do not know—I have not had time recently, but when we were preparing the organization of the central Bank of Canada I did look into the operations of central reserve banks, not only in England but in the United States, in Germany and in some other countries; there was no connection between—and there is none to-day, so far as I know—subject to correction—no direct connection between central reserve banks and central mortgage institutions. Mr. Towers is a man of eminent ability, great energy and activity, but if the central Bank of Canada is to develop along the lines and upon the basis on which it was founded, then certainly this institution should be kept as to its organization, clear and distinct from the organization of the central Bank of Canada, although I have no objection whatever to the central Bank of Canada having a representative on the board of directors.

Hon. Mr. STEVENS: In view of what the minister said, may I draw his attention to this: the next clause reads:—

The governor of the Central Mortgage Bank shall be the chief executive officer and shall on behalf of the board have the direction and control of the business of the Central Mortgage Bank.

Then we go over to section 12, and the only further reference is that the Central Mortgage Bank “may employ such officers, clerks and employees . . .” and so on. These are just the ordinary officials. You have no executive head of this institution by this bill, other than the governor of the Bank of Canada.

Hon. Mr. CAHAN: It says he is to have the direction and control of the business.

Hon. Mr. STEVENS: Yes. The next clause says:—

The governor of the Central Mortgage Bank shall be the chief executive officer and shall on behalf of the board have the direction

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and control of the business of the Central Mortgage Bank, with authority to act in connection with the conduct of the business of the Central Mortgage Bank in all matters which are not by this Act . . .

and so on. Now, I submit, Mr. Chairman, and I appeal to the minister to give consideration to this, that it is imposing upon the governor of the Bank of Canada a task that he ought not to be asked to undertake. Another thing is the deputy governor of the Bank of Canada is the deputy governor of this mortgage bank as well. If we are going to do that, you might as well say frankly in this legislation that we are making this mortgage bank merely a branch of the Bank of Canada. Some other members may agree that is good, but I think it is dangerous.

Hon. Mr. DUNNING: We did not follow the Australian example in that regard; we created a separate institution but tied it in with the main one.

Hon. Mr. STEVENS: I think it is tied in a little too tightly, that is all. However, I am not going to prolong the argument. I feel it my duty to point this out, and I should like to warn the minister that I think we are heading for trouble in this.

Mr. Ross: I should like to say that in my opinion the knowledge which is required by a governor of this bank is entirely different from the knowledge that is required of the head of the Bank of Canada. Certainly, I believe the chief executive of this bank should be one who has through years acquired the experience and knowledge which is necessary properly to understand mortgages and the situation with respect to mortgage companies as well. I do think it is imposing too much work on the governor of the Bank of Canada and the deputy governor of the Bank of Canada.

The CHAIRMAN: Shall the section carry?

Carried.

On section 6.

Hon. Mr. CAHAN: I have the same objection.

Hon. Mr. DUNNING: When we come to section 12 I am going to offer a suggested amendment which will, I believe, only partially meet the point, by making provision for the appointment of a manager.

Hon. Mr. STEVENS: Let me make an appeal to the committee here. A suggestion has been made that there is going to be a manager. After all, if you are going to have a manager, clothe him with some status in the country. The minister says he is going to amend the bill, but the amendment will only make the manager an incidental official if he exists at all. Why should we not give the executive head of this institution a position such as at least a deputy governor holds? He ought to be a man of status, with some prestige in the eyes of the business world, not an official, not an appointee, not a person just put in there as one of a number of clerks and officials.

Hon. Mr. CAHAN: He is appointed by the board and liable to dismissal at any time.

Hon. Mr. STEVENS: You have carried the clause so I cannot argue it further. In section 6 you are carrying out the same idea. You say "the governor of the Central Mortgage Bank shall be the chief executive officer and shall. . . ." I think it is a mistake, a serious mistake. The chief executive ought to be named in this bill. The position ought to be set out in this bill, and it should not be the governor of the bank.

Mr. THORSON: The main function of this organization is refinancing, discounting. That is the main function. Is not that a banking transaction rather than a mortgage or lending transaction?

Hon. Mr. STEVENS: No. One part of this institution's business will be sort of liquidating.

Mr. ROSS: Valuations.

Hon. Mr. STEVENS: There are two phases to this, the first providing new cheap money for loaning and the other is—

Mr. THORSON: That is the main purpose.

Hon. Mr. STEVENS: —to work as a sort of receivership. There are tens of thousands of individual mortgages in the country to-day, and that is the main business of this bank.

Mr. THORSON: The main purpose—

The CHAIRMAN: Order, please.

Hon. Mr. STEVENS: However, I do not want to be drawn off on a line. I do say the chief executive of this mortgage bank that is going to have \$200,000,000 of debentures and \$10,000,000 of capital, ought at least to have the dignity of having his title and position fixed in this bill.

Mr. TUCKER: In regard to chartered banks, you have presidents of chartered banks and you have general managers of chartered banks, and the general managers are regarded as having plenty of dignity to carry on.

The CHAIRMAN: Shall section 6 carry?

Mr. KINLEY: It seems to me the president of the Bank of Canada should appoint one of his trained staff.

Section carried.

The CHAIRMAN: On section 7.

Carried.

On section 8.

Carried.

Mr. THORSON: In section 8 there is nothing to prevent a person being appointed who just immediately prior to the appointment has been an officer of another company?

Hon. Mr. DUNNING: No, nothing at all. There is a difficulty there, as I know. One criticism which was made on section 8 from various sources was that I had taken great care to see that nobody who knew anything about the business would be on the board. That is hardly correct, and was not the intention. I think it is fairly obvious that member companies could not have a director or officer or their own on the board.

Mr. THORSON: He must resign first?

Hon. Mr. DUNNING: Well, of course. But we hope in the world of men who have lived their lives in this business and who have the point of view as well as the experience, we do hope to find men who will be qualified in our judgment to act as directors, but they must not be also directors of member companies.

Mr. PLAXTON: You are going one step further; you are asking him to divest himself of shares.

Hon. Mr. DUNNING: Yes.

The CHAIRMAN: Shall section 8 carry?

Hon. Mr. CAHAN: Well, it is not much use to make objections, Mr. Chairman.

The CHAIRMAN: No, Mr. Cahan, I do not feel that way. It is not carried if you have a statement to make.

Mr. COLDWELL: I should like to draw attention to fees.

Hon. Mr. DUNNING: Of a director?

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Mr. THORSON: Is not that age limit too high?

Hon. Mr. DUNNING: It is not an executive position, it is a directoral position. I am quite sure Mr. Cahan could qualify and there are many others who would also.

Mr. THORSON: I would be inclined to think the age is a little high.

Hon. Mr. DUNNING: You will not think so in a few years, however.

Hon. Mr. CAHAN: I certainly have no desire to qualify. I could not qualify after this. It is said when a man is my age he should be placed in an asylum for feeble-minded, or placed under the care of some guardian.

The CHAIRMAN: Shall section 8 carry?

Carried.

On section 9.

Hon. Mr. CAHAN: Just a moment. This bill is worth some consideration.

The CHAIRMAN: Yes, Mr. Cahan, all the time you desire.

Hon. Mr. CAHAN: These three directors who are to be appointed are evidently not presumed to occupy themselves constantly with the supervision of the operations of this Central Mortgage Bank?

Hon. Mr. DUNNING: The method of appointment and attendance of directors coming to perform the functions of directors is similar in its general layout to the provisions of the Bank of Canada and comparable with the Bank of Canada in that regard.

The CHAIRMAN: Shall section 9 carry?

Carried.

On section 10.

Hon. Mr. CAHAN: I have the same objection to section 10 as I did to the other section about the governor of the Central Mortgage Bank being the head of the board as well as the chief executive officer, as has control of the direction and control of the business.

The CHAIRMAN: Shall section 10 carry?

Carried.

On section 11.

Mr. Ross: I think the same objection applies there, Mr. Chairman. The governor and the deputy governor are both going to be on the executive committee. As I say, I think we should not impose these duties on them. In the second place, as I said before, the business of this bank has more to do with the question of mortgages than it has to do with the question of financing. I think it is a great mistake not to have a man who is the chief executive on this executive committee thoroughly familiar with the whole mortgage business of Canada. I have the greatest regard for Mr. Towers and his ability, but I do not think in this case you are going to have one man on this board who has a thorough knowledge of the mortgage business. We know it is very important to have that experience and knowledge, and I voice my objection again.

Mr. MACDONALD: Is there any additional remuneration for the director who is on the executive committee?

Hon. Mr. STEVENS: We have not come to that yet.

Hon. Mr. DUNNING: He would get whatever fees are provided for board meetings.

Mr. MACDONALD: Section 9 provides that the total fees paid to all directors shall not exceed \$7,000.

Hon. Mr. DUNNING: That is all they can get, including executives.

Mr. MACDONALD: Is it not possible that a great deal of time would be required in this work?

Hon. Mr. DUNNING: Having the Bank of Canada as a comparable institution, the same provision exists there. Meetings of the executive of the Bank of Canada are held once a week. The Bank of Canada executives are in the same position as one director, and he receives a fee for his executive meetings in the same manner as he would for a directors meeting. The total to be expended on all directors is limited by section 9.

Mr. MACDONALD: If he had to meet once a week, and if he came from some distance—he might not live here—one would think that he would get the bulk of the \$7,000, which would not leave much for the others.

Hon. Mr. DUNNING: The Bank of Canada gets along that way all right.

Hon. Mr. STEVENS: I want to register the same objection to this clause as I did to the preceding clauses. The committee might as well clearly know what it is doing. What we are doing is making the executive committee, consisting of the governor of the Bank of Canada, the deputy governor of the Bank of Canada and the deputy minister of finance and one other, leaving no room for the exercising of a permanent position in this institution of the individual that you claim somewhere in the bill is going to be appointed general manager.

Hon. Mr. DUNNING: Mr. Stevens, that is a question upon which I have heard debates in business institutions many times, as to whether or not the executive officer carrying out the official functions of the company should or should not be on the governing board of the company. In many cases one practice is followed and in other cases the other practice is followed. Some companies will not on any account have their general manager a member of their executive body. He attends there for the purpose of reporting; others include the general manager in their executive.

Hon. Mr. STEVENS: That is not what you are doing at all. What you have done is this: you created a general executive officer in the person of the governor. That is already done; that is in the past. Now, in this section you erect an executive committee consisting of the governor, the deputy governor, the deputy minister of finance and one director selected by the board. Now, where is your so-called general manager coming in? That is the thing that is worrying me. He is not in the picture at all.

Hon. Mr. DUNNING: He will be sitting there reporting on the business the same as is done by general managers of scores of companies.

Hon. Mr. STEVENS: With all due respect to the executive committee named here, and with all due respect to the personnel here mentioned of the Bank of Canada, I think it is a mistake and I think it is all wrong to make the general manager of this institution entirely subject to that set-up. I think it is a serious mistake.

Mr. TUCKER: There is one thing I should like to ask. I do not know how it is worked in the Bank of Canada, but should not there be some provision that the board of directors shall meet at least every so often? Because otherwise your executive committee simply carries on and practically ignores the board of directors.

Hon. Mr. DUNNING: It was very difficult to visualize precisely what the requirements might be in that regard, and consequently it was left to by-law, which must be approved by the Governor in Council.

The CHAIRMAN: Shall the committee adjourn until 4 o'clock this afternoon?

Mr. THORSON: That would be governed by by-law?

The committee adjourned at 1 p.m. to meet again this afternoon, at 4 p.m.

AFTERNOON SESSION

The Committee resumed at 4.00 p.m.

The CHAIRMAN: Order, gentlemen. Shall section 11 carry?

Carried.

Mr. CLEAVER: That was the section in which the minister was going to make an amendment with regard to the manager.

Mr. TUCKER: I doubt if it is necessary to make an amendment to the Act, under your powers to employ such officers. The general manager would be an officer.

Hon. Mr. DUNNING: I do not think it is really necessary.

Hon. Mr. STEVENS: I am not going to prolong the argument, but here you have the general manager of a bank or a mortgage bank that will have \$200 million debentures and \$10 million capital, and you give him the distinguished position of being an officer, clerk or employee. Well, it may be all right, it may be legal; but it certainly is not in accordance with my idea of legislation.

The CHAIRMAN: Shall the section carry?

Mr. Ross (St. Paul's): The only thing I say again is that this bank—the major job of this bank is in connection with mortgages, not with finance; it has to do with valuations and all that sort of thing, and the majority of the assets of this bank are going to be mortgages—are going to be backed by mortgages.

Hon. Mr. DUNNING: No.

Mr. Ross: No, sir; they are going to be backed by mortgages.

The CHAIRMAN: There is government credit.

Mr. Ross: There will be government credit as well, but they will be backed by mortgages.

Hon. Mr. DUNNING: The assets of the bank will not be mortgages, they will be evidences of debt of various kinds taken from mortgage companies.

Mr. Ross: And the ultimate evidence of debt is mortgages. It is going to require the attention and time of this governor of this bank, or chief executive of the bank, whatever you like to call him—all his time; he should be a man of experience in the mortgage business, and not a man of experience in the banking business of Canada. These two things are entirely different. The outlook of these two classes of men is different, and I protest again that the governor of the bank should have this extra work thrust upon him. Much as I think of him, and I think a great deal of him, I do not think he is as well qualified for this job as a great many other people in Canada would be.

The CHAIRMAN: Shall the clause carry?

(Carried.)

Clause 12. Shall clause 12 carry?

(Carried.)

Shall clause 13 carry?

Hon. Mr. CAHAN: I am not in a position to give very much consideration to any suggestions made, and one might just as well sit and see section after section carried. Perhaps the minister has decided to put through the bill as it is.

The CHAIRMAN: There is no disposition on the part of the chair to rush matters. We are ready to hear all the statements.

Hon. Mr. CAHAN: I quite agree. It is quite true that the chairman will give consideration, but I see no disposition on the part of the representatives of the government to give very much consideration to suggestions that may be made, and therefore what is the use.

Mr. THORSON: The committee would like to hear them.

Hon. Mr. CAHAN: I do not think so.

Hon. Mr. DUNNING: Mr. Chairman, I do rather object to that. If I do not agree with the representations made, I, as a member of this committee, say I do not agree. Mr. Cahan cannot expect to enforce agreements with his suggestions.

Hon. Mr. CAHAN: No, quite.

Hon. Mr. DUNNING: Naturally those of us who have been working on this matter have debated it a great deal and have pretty fairly definite ideas, although I must say I have indicated to the committee at various stages up to now points on which I think the representations made from various quarters have merit, and in connection with which changes will have to be made. But to merely take the attitude that because one's suggestions are not approved by the majority of the committee, therefore the suggestion should not be made, is, I submit, not quite fair.

Hon. Mr. CAHAN: Well, possibly not; but I will deal with one now. I may have misunderstood the minister; but I understood him during the discussion on this bill to say that he was prepared to place the general manager to be appointed in a position where he would have executive direction and control.

Mr. THORSON: Not executive direction and control.

Hon. Mr. DUNNING: No.

Hon. Mr. CAHAN: He cannot do anything else unless he has executor powers. The general manager has executive duties.

Hon. Mr. STEVENS: He is executive head in theory or he should be.

Hon. Mr. DUNNING: Perhaps we misunderstand each other.

Mr. THORSON: The definition of the term "executive"—

Hon. Mr. CAHAN: Please allow some others to make a suggestion and then follow up.

Mr. THORSON: Yes, all right.

Hon. Mr. CAHAN: I understood the minister to say he was prepared to revise the bill so it would be clear, so that the terms of the bill as to what the executive duties of the general manager were anyway, and now when we come to this clause with regard to clerks and officers it is passed over and no suggestion of an amendment is made by the minister, although I understood him—perhaps I was mistaken—to suggest that he was prepared to make or propose some amendment in respect to the general manager.

Hon. Mr. DUNNING: I am sorry if I was so misunderstood. I did indicate I would give consideration to the desirability of specifically mentioning in section 12 a manager or some such officer. I have given consideration to it; but I do not want there to be in this bill when it passes the house any misunderstanding that the executive officer which this parliament is holding responsible for this institution is the governor of the bank. I do not want any possible misunderstanding in the future. I know perfectly well that when parliament desires to find out anything it wishes before a committee such as this in the future about the Central Mortgage Bank the man it will want to hold responsible is the governor of the central bank, and I would prefer not to put any language in the statute which would make it appear that the ultimate responsibility rests elsewhere. Now, that does not mean that I do not recognize fully

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that a fully qualified mortgage man must be the detail operating officer; he must, of course, just as any institution has technical men for technical aspects of its work; but the ultimate executive authority will reside in the governor of the bank, and it will be the governor of the bank that parliament will be holding responsible for the conduct of this institution. I think that is what Mr. Stevens wanted me to say this morning.

Hon. Mr. STEVENS: We now understand the situation clearly. I quite agree that I am out of order in coming back to section 12. We now understand the position clearly. The minister has stated his position. It is in diametrical opposition to the view, speaking for myself only, that I hold, and I think it is a mistaken one, but that is his opinion, and of course he is entitled to it.

Mr. Ross: Now, I want to follow on with that, Mr. Stevens, and with what Mr. Dunning has said. Mr. Dunning said that the governor of the bank was to be held responsible. I would like to ask Mr. Dunning what the main duties of this bank are going to be? Is it a banking institution? Is it a mortgage institution? Is its main job going to be the supervision of mortgages or is it going to be the supervision of bank loans?

Hon. Mr. STEVENS: The adjustment of mortgages.

Mr. Ross: The supervision, I mean.

Hon. Mr. DUNNING: There is no supervision of mortgages as such contemplated by his bill. There is supervision for—not rediscounting—refinancing mortgage companies, and, of course, in that connection it will be necessary for the bank at all times to have regard to the manner in which its member companies are conducting their business. If you press for an exact definition I will say that any institution of this character is correctly described as a mortgage bank; that is to say, the only banking it can do is in connection with mortgages.

Mr. Ross: May I follow that up? Now, we have the Bank of Canada. The governor of the Bank of Canada has to do with the general banking business of the banks of Canada. That is true. This business is an entirely different business from the general banking business. This business of mortgage loaning is an entirely different thing. The assets, the ultimate assets of this bank are the mortgages which are held by the mortgage companies, and I again say that we should have a man who is thoroughly qualified, whose main job is going to be just that business.

Hon. Mr. DUNNING: There will be such a man.

Mr. Ross: I think he is going to occupy such a prominent position in this country that he should not be under the governor of the Bank of Canada, because the two jobs are entirely distinct from each other.

Mr. THORSON: Mr. Chairman, this is not a bill dealing with the supervision of mortgages, nor is the Central Mortgage Bank, if it is created, an institution that is set up for the purposes of dealing with mortgages as such. It might be highly desirable to have a man in the organization as a general manager, let us say, of the Central Mortgage Bank, who would be familiar with mortgages generally throughout the dominion, and I understood from the minister that it was his intention that there should be such a general manager. He would be one of the officers.

Hon. Mr. DUNNING: He would be one of the officers. Whether he would be called the general manager or not is not material, but the expert in the mortgage business.

Mr. THORSON: Yes, exactly, and he would be one of the officers who would be appointed under the provisions of section 12.

Hon. Mr. DUNNING: Certainly.

Mr. THORSON: I entirely agree with the minister that he should be an officer of the corporation that is set up, but he should not be given such powers as would bring about a conflict of authority in the matter of policy between the governor of the bank and himself. He should be in the position of a general manager of the organization, and there are big financial institutions who have general managers who are not members of the board of directors and who are not members of the executive committee of the organization. I think the general manager of the Bank of Montreal, for example, is an officer of the bank but is not a member of the board. It does not matter what this organization is, it is going to be set up with various functions. You can call them banking functions or whatever you like. The functions are described in the Act, and it is a matter of policy that those functions should be discharged by an organization that is closely tied in with the bank and with no one having a conflict of authority with that organization. You could have your general manager or whatever you like to call him—a superintendent—supervising the general details of administration, but he should be an officer responsible to the board, not a member of the board, and there should be no possibility of conflict between him and the board. I think that is a sound policy and a safe one.

Mr. Ross: Now, we have one thing following Mr. Thorson, that is responsibility to the board. That is right. We have on the board one man, possibly, who is going to be familiar with the mortgage business—not on the board but on the executive council who is going to be familiar with the mortgage business of Canada. That is all we have got.

Hon. Mr. CAHAN: No, he is not going to be on the executive committee.

Mr. Ross: There is one director who is thoroughly practically familiar with the mortgage business of Canada; the rest of them are not.

Hon. Mr. CAHAN: Where is there provision for that?

Mr. Ross: He is on the executive council. One director is selected by the board on that council. I would like to point out to you, as I said before, that this bank's business is the business of mortgages, not the business of banking.

Mr. CLEAVER: Would you permit a question on that point?

Mr. Ross: No. Let me get through. We have one man here—in other words, there are three of these men who do not talk the same language as the manager does or the companies do. The mortgage companies of Canada do not talk the same language as the banks do. I think in view of the fact that there are hundreds of thousands of loans that are going to go through and the money that is involved will be based on the principle of mortgage loans, it is certain that the governor of this bank should be a man who is thoroughly familiar with the mortgage business and not a banker, because they are two entirely different businesses.

Mr. CLEAVER: I suggest you read section 32.

Hon. Mr. DUNNING: There is a clear division of opinion which we can easily resolve without much further discussion. It is really as to whether or not we should concentrate executive control of this institution clearly in the Bank of Canada. Mr. Ross has pressed that in his view it should not be so centralized. I have given the matter a lot of thought. I think it is the best thing to do in the circumstances, but I can only offer my opinion for what it is worth. I think there are vastly more important matters further on in the bill. If we could settle this matter one way or the other—I suppose it is technically settled now, the clause is carried, but need we discuss it further? Is the issue not clear?

Hon. Mr. CAHAN: The decision is clear.

The CHAIRMAN: Clause 13, shall it carry?

Carried.

[Mr. T. D'Arcy Leonard, K.C.]

Shall clause 14 carry? This is a very important clause, and it refers to \$200 million, and that is an important matter. I wonder if the minister would care to make a statement as to where we are to get the money.

Hon. Mr. DUNNING: It was necessary, of course, to determine the sum for the debenture issuing power at the start of this institution. I notice that an idea is being conveyed in some sections of the press that this \$200 million will all be needed to make the necessary adjustments in connection with the adjustment features of the Act. That is not our policy at all. Perhaps reference to the figures given by Mr. D'Arcy Leonard as to the total mortgage indebtedness to the institutions comprising his organization would be the best answer to any idea that \$200 million of debentures will be required for the purpose of making the adjustment of the 50 per cent which under later provisions the bank will be required to make. If I remember correctly the total amount represented by mortgage assets of all the institutions represented by the association was about \$580 million.

Mr. LANDERYOU: Do you know what proportion that bears to the total?

Hon. Mr. DUNNING: We had \$671 million as a total so far as the census revealed it, and in any case there is sufficient evidence there to dispose of the idea that even if everybody came in there would be anything like \$200 million required for the purposes of the necessary adjustment.

Mr. DONNELLY: Half the write-down.

Hon. Mr. DUNNING: Yes.

Mr. LANDERYOU: We do not know what percentage that \$570 million bears to the total.

Hon. Mr. DUNNING: I have given to the committee all of the information which is available from any source along that line.

Hon. Mr. CAHAN: Does that include the mortgages outstanding of all those companies who are entitled to become members?

Hon. Mr. DUNNING: There may be some companies, Mr. Cahan, who are not members of the association represented.

Hon. Mr. CAHAN: Obviously.

Hon. Mr. DUNNING: We have not accurate information as to the amount represented by other borrowings except so far as it is reflected in the census figure which I gave you yesterday.

Hon. Mr. CAHAN: I would like to ask you one other question. Have you any information dealing with the companies represented by the association with which Mr. Leonard is associated? Have you any information as to the amount of mortgages outstanding after October 1st by farm loans and, secondly, the urban loans under \$7,000?

Hon. Mr. DUNNING: We gave yesterday the census information respecting farms, and we have here—yes, this will be found on page 45 of yesterday's proceedings, Mr. Cahan—the statement of statistics of mortgages in Canada divided into the different categories as reported to the superintendent of insurance annually.

Hon. Mr. CAHAN: But I understand there are companies outside of these which will be entitled to become members.

Hon. Mr. DUNNING: There are provincial companies, of course, that are not under our federal legislation. That would be one class. We have included the Ontario provincial companies in this list.

Hon. Mr. CAHAN: But there must be other companies in other provinces.

Hon. Mr. DUNNING: I have no means of accurately getting at that. It would not represent a very large addition, I would not think. This represents the main corporate mortgage field.

Hon. Mr. STEVENS: Mr. Chairman, in roughly checking over the reports to which the minister referred this morning, it would appear from these reports that there was almost a phenomenally small amount that were classified under mortgages in which legal proceedings have been taken, and are still unsettled. Compared with the number or amount represented in the mortgages that appear to be, according to this report, in good standing, I am personally rather surprised at the smallness of the figure in the individual cases.

Hon. Mr. DUNNING: The superintendent of insurance has just handed me a compilation which he has made up which include provincial companies. He has gathered the information from the provincial statistics, and it includes fire and casualty companies also, and mortgages of fraternal societies and so on. Fraternal societies might not come within the scope of this legislation—I do not suppose they would—but the total of all mortgages appears to be \$787 million including all that we can gather together.

Hon. Mr. CAHAN: \$750 million was given to me as an approximate estimate.

Hon. Mr. DUNNING: These figures are taken from all the provincial reports as well as our own federal reports.

Hon. Mr. CAHAN: May we have that information placed on the record?

Hon. Mr. STEVENS: Does the statement show the proportion of that which is in default or arrears?

Hon. Mr. DUNNING: No, this is a statement of the aggregate.

Hon. Mr. STEVENS: That will be useful to have on the record.

Hon. Mr. DUNNING: I shall put it on the record.

MORTGAGES IN CANADA, 1937

Dominion Companies:—

Life Insurance..	\$298,146,148	
Fraternal Societies..	13,052,672	
Fire and Casualty..	3,440,999	
Loan..	97,050,041	
Trust..	60,826,015	
		\$472,515,875

British and Foreign Companies (in Canada):—

Life Insurance..	\$ 31,708,082	
Fraternal Societies..	121,107	
Fire and Casualty..	1,917,731	
		33,746,920

Provincial Companies:—

Life Insurance (Ont., Que., Man., B.C., and Alta.)..	\$ 2,725,632	
Fraternal Societies..	830,558	
Fire and Casualty..	549,166	
Loan..	65,499,805	
Trust..	211,167,963	
		280,773,124

Total Mortgages..	\$787,035,919
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Mr. CLEAVER: What is the intention as to the payment date of these debentures?

Hon. Mr. DUNNING: That question arose as I can state the intention without looking it up, although I do not know that it is specifically dealt with—the intention is to make the term of the debentures bear relationship to the terms of the mortgages in connection with it.

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. STEVENS: In each agreement?

Mr. MACDONALD: I notice that the debentures are to be issued and then what is to happen? Are they to be sold to the general public?

Hon. Mr. DUNNING: Yes.

Mr. ROSS: Does this statement you gave include the number of mortgages on farms and on urban property?

Hon. Mr. DUNNING: No, it does not. It does not give the number. I distinguished as to numbers yesterday, did I not? No, it was dollars yesterday. Mr. Leonard gave some information on numbers.

Mr. ROSS: I wonder if we could get the number of mortgages.

Mr. G. D. FINLAYSON (Superintendent of Insurance): Not from us.

Mr. CLEAVER: Mr. Leonard said 50,000 farm mortgages and \$200 million, and 100,000 urban mortgages and \$389 million.

Mr. LANDERYOU: Has the minister any estimate of the amount the government will have to pay out under that 50 per cent loss?

Hon. Mr. DUNNING: No, I have none. That depends upon the extent to which member companies come in and the state in its turn have their thousands of individual mortgage accounts and the appraisal—

Hon. Mr. CAHAN: I notice in this report on loan and trust companies made by the superintendent of insurance for the year ending December 31, 1937, that the last which appears to be available—

The CHAIRMAN: What is the page?

Hon. Mr. CAHAN: It is page 28, Roman characters—I notice that of company funds there are \$5,411,003 of mortgages of real estate outstanding dealing with company funds and of those there are only \$299,127 of mortgages in respect of which legal proceedings have been taken, and only \$31,055 in which the interest is due and unpaid under six months, and \$142,575 in respect of which the interest due and unpaid extends over six months. If that is characteristic of the status of the mortgages for all the companies it shows a comparatively small percentage of mortgages in respect of which interest is overdue and unpaid.

Hon. Mr. DUNNING: That is the trust company's statement from which you are reading?

Hon. Mr. CAHAN: Yes.

Hon. Mr. DUNNING: The loan company's statement which you will find on pages 20 and 21 does not—

Hon. Mr. STEVENS: That approximates about the same ratio.

Hon. Mr. DUNNING: Yes, but the amounts are larger.

Hon. Mr. CAHAN: Yes, but I was dealing with ratio. The overdue mortgage situation is not as aggravated as I was induced to believe, and therefore the necessary remedies are very extensive as compared with the difficulties that are to be surmounted.

Hon. Mr. DUNNING: Of course, Mr. Cahan, the superintendent of insurance informs me these are only the amounts which the companies themselves consider an asset and show in their balance sheets as an asset.

Hon. Mr. CAHAN: That may be so. That is practically wiped out.

Hon. Mr. DUNNING: Not so far as the debtor is concerned.

Hon. Mr. CAHAN: The debtor is not the only person to be taken into consideration.

Hon. Mr. DUNNING: I agree entirely.

Mr. TUCKER: Are we on 15?

Hon. Mr. DUNNING: Yes.

Mr. TUCKER: I suppose that this is the section where we should consider the possibility of land companies, such as the C.P.R. and the C.N.R. and the Hudson Bay Company. I think arrangements should be made so that people who got mortgages for land purchases from them would be able to get the benefit of this act. For example, in the province of Saskatchewan they would have to have power to enter into an agreement with such bodies. As I understand it, there is over \$15,000,000 loaned by the Saskatchewan Farm Loan Board. There is no reason why the people who borrowed from the Saskatchewan Farm Loan Board should not have the benefit of this act the same as if they had borrowed the money from one of the insurance companies. I was going to suggest, Mr. Chairman, that one way that might be provided for is to insert a proviso providing that the bank may, with the approval of the Governor in Council, and then it would be a matter for the Governor in Council to give approval upon such terms as are sufficient to protect the interests of the dominion. A proviso may be inserted providing the bank may, with the approval of the Governor in Council enter into a membership agreement with any other company or corporate society or organization whatsoever. That would cover the right to enter into an agreement with fraternal organizations or with farm loan boards in one of the provinces, or one of the land companies.

Hon. Mr. DUNNING: I do not think that so wide power should be given to any government as that.

Mr. TUCKER: If you do not want such a wide power—

Hon. Mr. DUNNING: I admit we are a pretty good government, but I do not want powers as broad as that.

Mr. TUCKER: It shows the confidence I have in the government. If you do not want such wide powers I suggest power should be given in this section to enter into an agreement with others. Then it is specific.

Mr. THORSON: Another way of meeting the situation would be by doing what I suggested this morning, providing in section 31 that there should be power by regulation to define for the purposes of the act member companies.

Hon. Mr. STEVENS: Mr. Chairman, I understand we are allowing subsection (g) to stand, as that question comes up under the interpretation clause. Under this clause as it now stands, the words "within twelve months" occur. I am questioning in my own mind whether that is a sufficient time.

Mr. THORSON: After date to be fixed by the government.

Hon. Mr. STEVENS: I imagine, after the act came into operation.

Mr. THORSON: It does not say so.

Hon. Mr. STEVENS: Quite, it does not say so. This act shall come into force on proclamation.

Hon. Mr. DUNNING: After that a date must be fixed.

Hon. Mr. STEVENS: Yes, but why fix a twelve months limit? From what has been disclosed here on some of the problems attached to this, it is quite easy to understand that some companies would find it impossible to determine within twelve months that they would come under the act or become members. Unless there is some other reason, some necessity for a cut-off date, it strikes me that the twelve months period is too short, assuming the law is a good law and the whole thing is desirable.

Hon. Mr. DUNNING: Now, may I deal with Mr. Tucker's point first and the same one covered by Mr. Thorson and ask you to hold yours Mr. Stevens and remind me of it later. The difficulty with respect to land companies which the committee will visualize is that a land company—the difficulty of bringing in land companies is, of course, that a land company sells a piece of land for 100 per cent of its value. It is therefore in a different position in relation to the adjustment provisions of this act, from a company which has

[Mr. T. D'Arcy Leonard, K.C.]

made an advance of money presumably only to the extent of a proportion of its value; and to say with respect to a land company which sold land and has a piece of land and has outstanding against it now 90 per cent of its present value that we would by virtue of the adjustment provisions automatically write that down to 80 per cent and the state assume one-half, represents a very real difficulty, one that I frankly confess I have not been able to see my way through at the present. With respect to a provincial government creating loaning bodies, frankly we had not contemplated going into that phase of it.

Mr. HOWARD: No.

Hon. Mr. DUNNING: Need I argue it having regard to a history of these schemes and the fact the state in the form of the province is already assuming whatever burden there might be with respect to the matters for which that particular entity, the province, has made itself responsible?

Mr. HOWARD: Don't touch it.

Hon. Mr. DUNNING: I have no reason to believe that any province is unduly severe with respect to its borrowers.

Mr. MACDONALD: We did not exempt them until the Farmers' Creditors Arrangement Act.

Hon. Mr. DUNNING: No, although some provinces objected mightily to their being dealt with under the Farmers' Creditors Arrangement Act. But for the government to come in and assume the results of a provincial land mortgage scheme is, I think, going a very, very, long way. I am willing to listen to what the committee may have to say about it but I am afraid that Mr. Cahan will say once more I have pretty fixed ideas.

Hon. Mr. CAHAN: I am glad to know that even in your imagination there is some limit.

Mr. TAYLOR: What is the minister's idea about municipalities and cities whose citizens have obligations in mortgages?

Hon. Mr. DUNNING: I take the same attitude with regard to the provinces precisely.

Mr. TAYLOR: So you would be inclined to deny them the right to enter?

Hon. Mr. DUNNING: I do not see how we can go into that field; I really do not.

Mr. TAYLOR: How do they differ from the others?

Hon. Mr. DUNNING: Wherever a public body has undertaken to go into this business they have undertaken it upon mutual responsibility, upon the responsibility of all of the electors of that self-governing unit, whatever it may be. And it seems to me that it is not for the whole people of Canada to say that because a municipality made a mistake in going into the mortgage business, that therefore we will come along and have the whole people of Canada assume one-half of the load. I have the same view with respect to all provinces.

Mr. TAYLOR: The municipalities did it on the strength of dominion legislation.

Hon. Mr. DUNNING: You mean under the old 1919 Housing loan program? Well, in that case the province is responsible under that law.

Hon. Mr. STEVENS: That is pretty well liquidated, anyway.

Hon. Mr. DUNNING: How much is left now?

Mr. TAYLOR: There is quite a serious condition there.

Hon. Mr. DUNNING: But not in relation to this legislation, Mr. Taylor.

Mr. TAYLOR: I cannot see the argument yet, Mr. Chairman.

Mr. MAYBANK: With reference to what Mr. Dunning was saying about the loan companies, I can agree naturally that their position is different from

that of a mortgage company and for the reason that they sell land at 100 per cent, and it may very well be, and may still be 90, and therefore under this section one of the adjustments is that the mortgage shall be written down to 80 per cent. We have in our definition here that mortgage includes agreements for sale.

Hon. Mr. DUNNING: Yes.

Mr. MAYBANK: Apparently any company now that is comprehended or in respect to this legislation affected, they may have agreements for sale, just like land companies. We would be writing them down to 80 per cent, so the situation would not be different in their case from what it would be in the case of the land company, with this exception, of course—

Hon. Mr. DUNNING: Very different.

Mr. MAYBANK: With this exception, anyway, the greater bulk of their stock would be lent money rather than purchase money.

Hon. Mr. DUNNING: With a mortgage.

Hon. Mr. STEVENS: Foreclosure reality.

Hon. Mr. DUNNING: When a mortgage company sells land which it has repossessed, you can make up your mind that the total amount went in there.

Mr. MAYBANK: There is no doubt about that. I was just wondering about the case of some of those companies which have now sold land. I think there are some that are mortgage companies but they have also had land and they have sold it. Now, in this case you would be writing down too. It seems to me we might need a change in this definition. You might want to deal with agreements for sale a little differently.

Hon. Mr. STEVENS: Cut-off date.

Mr. TUCKER: I do not want to take up too much time on the point, but I should like to speak with regard to the body set up by such a province as Saskatchewan, a farm loan board. I think we should look at this from the standpoint of the man who borrows money from different parts of the country. Take the Farmers' Creditors Arrangement Act in Saskatchewan. If he applies for relief under the Farmers' Creditors Arrangement Act, his mortgage would probably be cut down by 20 per cent, roughly, of the value of his land. If he has borrowed back a period from the Mutual Life Insurance Company, he will come under this section and he can get the mortgage cut down to 80 per cent of the value of the land. That is because he has seen fit to borrow from a corporation set up under a provincial act. The provincial Farm Loan Board of Saskatchewan is a corporation within the meaning of the act which set it up. I can easily understand why you would not want the refinancing position to apply to a farm loan board under a provincial act; but I cannot see why your adjustment provision should not apply to all holding mortgages from a loan board of any province. I can easily see why you would not want the refinancing provision to apply, but I do not see any reason in the world why he should not get the same right to have his mortgage written down as if he had it from a mortgage company. He needs adjustment just as much as the man who got the money from a mortgage company. There is no particular reason why the provinces should be exempt loaning money, because they probably loan just as carefully as those other companies did.

Mr. DONNELLY: No.

Mr. TUCKER: There is no reason why they did not. Maybe some companies that have been quite reckless may be able to write down their mortgages, and it is quite possible that a lot of these companies have been more reckless in their lending than the provinces have been. I would have to be shown that they were not. I would have to be shown that our provinces were more reckless than any single one of them so far as the individual is

[Mr. T. D'Arcy Leonard, K.C.]

concerned. And under that part of the act he is just as much entitled to the benefit of this act as the person who borrows from any other corporation, because they are creating a corporation under the provincial act. The actual provision here says:—

A mortgage, loan, trust or insurance company incorporated under the laws of Canada or any province thereof.

The Saskatchewan Farm Loan Board might be regarded as a mortgage company incorporated under the laws of the province. I hope that it is not taken for granted that this board is different—

Mr. THORSON: It would have to be excluded from the operation of the act in view of such decision, if it is incorporated as a separate corporation, not as a mortgage company.

Hon. Mr. DUNNING: I cannot point to the specific place where it would be excluded, but I prefer to deal with the question rather than its exclusion. It is certainly intended that it should be excluded.

Mr. MACDONALD: I think they are boards, not companies.

Mr. THORSON: They are incorporated as a body politic.

Hon. Mr. DUNNING: In reply to Mr. Tucker, if I can have Mr. Tucker's attention for a moment—I listened to him. I take the view that borrowers from provincial boards would be in the same position as borrowers from companies who were non-members; and I believe that what might be called the competitive force of the adjustments which are made by the member companies would find its reflection in a provincial board quicker than in any other place, and the people who should bear that loss are the electorate. We provided that particular piece of machinery. That is my view. All provinces did not do it. Why should the province of Prince Edward Island be taxed to pay the losses made by means of provincial machinery in Ontario or Saskatchewan?

Mr. THORSON: Is it your view, for example that any province that wanted to give its borrowers the benefit of this act might make the necessary adjustment in its mortgages so that the borrowers might borrow from one of the other companies who become members of the bank, to pay off the adjusted loans?

Hon. Mr. DUNNING: It might, but that would not solve the problem of the adjustment. The expenses of the adjustment would be, of course, on the province concerned. Much as I should like to help, in such circumstances I am afraid we would be getting into a regular bog. I do not want to say anything to the detriment of any particular province. Mr. Tucker spoke of Saskatchewan. I have not Saskatchewan particularly in my mind at all at the moment as some hon. members can well understand.

Mr. THORSON: I think we all know which province you have in mind.

Mr. DONNELLY: I should like to ask the minister a question, not particularly referring to this section. Apparently this act will reduce the rate of interest of most companies to 5 per cent. Now, is it the intention of the government as well that the Canadian Farm Loan Board shall reduce the rate of interest on its loans to 5 per cent?

Hon. Mr. DUNNING: It is, right now.

The CHAIRMAN: Shall the clause carry?

Hon. Mr. DUNNING: Just a moment. I have a drafted agreement, if the lawyers present will follow it.

Hon. Mr. STEVENS: You just want the lawyers to follow this.

Hon. Mr. DUNNING: They will do the objecting. The amendment is as follows:—

That clause 15 of the bill be amended by striking out the word "membership" in line 17 on page 5 and by inserting after the word "agreement" in line 17 on page 5 the following words: "(in this act called a membership agreement)". The clause would then read, "The Central Mortgage Bank may at any time within twelve months after a date to be fixed by the Governor in Council, enter into an agreement, in this act called a membership agreement, with any mortgage, loan, trust, or insurance company incorporated under the laws of Canada or any province thereof, or authorized to do business in Canada."

Mr. THORSON: Why not say "hereinafter termed a membership agreement"?

Mr. CLEAVER: In this act called a membership agreement.

Hon. Mr. DUNNING: It just gives a definition. Now, with regard to the twelve months. It was necessary to set some date. We must bear in mind two dates, first the date on which the act is proclaimed to come into force, following all the necessary investigations and negotiations and drafting of membership agreements and so forth. After all the details of membership are gone into the act will be proclaimed. After it is proclaimed the government must then set a time at which the twelve months period will start. The reason for the twelve months is that we cannot have a situation like this dragging along. A company may, having in mind possibly coming under the act at some later date, adjust its business so that it will have it more advantageously over a long period of time. We must have a date at which the adjustment fixed by the act creating the liability on the federal government and on the Central Mortgage Bank and ultimately the federal government must come in; and we tried to allow a reasonable time for every company to look at its position. We had in mind the further fact, the very fact that such legislation is on the statute book will be, I am told, by those in the business, a disturbing factor so far as their relations with their own borrowers are concerned, and the shorter the period of that disturbance the better for everybody. That is, briefly, the argument. I do not think, Mr. Leonard, your institution has any particular representation on the twelve month period.

The WITNESS: I have no representation to make on that, sir.

Hon. Mr. STEVENS: That is the answer.

The CHAIRMAN: It is moved by Mr. Dunning that clause 15 of the bill be amended by striking out the word "membership" in line 17 on page 5 and by inserting after the word "agreement" in line 17 on page 5 the following words: "(in this act called a membership agreement)". Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

On clause 16.

Hon. Mr. STEVENS: May I ask the minister a question just to help me, at least, and I imagine it will help others. I was going to ask the minister if he will be good enough to say before we start into the details of this particular important section, whether a company that does not enter into an agreement with regard to the adjustment feature would or would not have the privilege of adopting all money for new mortgages?

Hon. Mr. DUNNING: It would not.

Mr. ROSS: May I ask the minister before we discuss that if there are any amendments to this clause?

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. DUNNING: There are a number of amendments as we go through, perhaps.

Mr. CLEAVER: I move we take up this section clause by clause.

The CHAIRMAN: On subsection (a).

Hon. Mr. STEVENS: This raises a slightly different question from the one I have just raised. Is it possible to adjust or to differentiate between their adjustment on farm mortgages and their adjustment on service mortgages, or must they bring all of their business, both urban and farm, into the agreement?

Hon. Mr. DUNNING: All; but there is a point there which is of some importance. It is represented to me that if we say that as of to-day the mortgage companies shall adjust, that means that any arrangement which they entered into yesterday will be subject to adjustment to-day; and it is fairly well known, I think, that adjustments which have been made during the last three years—many of them under the aegis of the Farmers' Creditors Arrangement Act and so forth—represent a very very substantial amount, and the question arose as to whether we should compel them to adjust everything, mortgages and agreements for sale made right up to the moment of the membership agreement. I am inclined to think that we would expedite our objective if we gave the companies some leeway in that regard without doing any injury to anyone. I have not a date in mind.

Mr. THORSON: You would require them to adjust mortgages entered into prior to a certain date?

Hon. Mr. DUNNING: Yes. It would mean adding after the word "agreement" in line 26 on page 5, "entered into before the day of . ." That is the point. I should like the committee to give some consideration to the idea. From my own point of view if we set that back two years it would be no more than fair.

Mr. TUCKER: Mr. Chairman, that leaves us the question of a renewal agreement that has been signed in the province of Saskatchewan, the renewal agreement of mortgages which have been adjusted under the Farmers' Creditors Arrangement Act. I had a great deal to do with that. They have now written them down below what they figured was the value of the security. In other words, they valued the security and then they allowed the mortgage to the full amount. Now, the purpose of this act is to write down to 80 per cent. I think all these renewal agreements that have been signed within the last year should come under the act, because these renewal agreements had the idea in mind to give the companies the benefit of 100 per cent of their security.

Mr. THORSON: You might draw a differentiation between mortgages where the consideration was totally a new consideration and mortgages where the consideration was the previous loan, where there was simply the extension of an agreement.

Hon. Mr. DUNNING: I wonder if Mr. Leonard would not give us his views on this point? I think, if I remember rightly, the representations came from your organization in that regard.

P. D'ARCY LEONARD, recalled.

The WITNESS: Mr. Chairman and Mr. Dunning, I think that there is an important point there, and unquestionably in connection with farm mortgages there should be some cut-off date. I think that should be done in fairness to the government and recognizing the contracts recently made. You will recall the submission I made in connection with urban mortgages. I dealt with the confining of them to non-current mortgages. That would have had the same effect as a cut-off date on urban mortgages, carried back, broadly speaking, to some date represented by a date during the depression. I think it would

have been a date earlier than two years, and I think that again there is a distinction between the urban mortgage situation and the farm mortgage situation. Mr. Tucker is quite correct in saying that a number of renewal agreements have been made on existing farm mortgages on the basis of adjustment, and setting up of a cut-off date prior to that too far back deprives borrowers of the same benefit that the government intends here for others. I am not sure just what submission one could make. I do not quite agree with Mr. Tucker's statement as to the board of review. I think some of the board of review valuations have been substantial, but I do urge again in connection with the urban mortgage situation that the mere setting up of a cut-off date will not meet the difficulties I pointed out, and unless that date were carried out quite a considerable time, and even then I doubt if it would do it.

In connection with the farm mortgage situation, some cut-off date, whether it should be a more recent date as Mr. Dunning suggested or should contain the exceptions made by Mr. Tucker, is something I would not like to make a definite statement about now.

Mr. THORSON: If we have a cut-off date, should not that be confined to mortgages where the consideration is an entirely new lending rather than an extension of an existing mortgage?

The WITNESS: I would say broadly speaking that is correct in as far as farm mortgage situation is concerned, and granting I am not in any way dealing with the suggestion of city mortgages; but your renewals in connection with urban mortgages have largely been made on the same basis as new contracts during the last few years.

By Mr. Thorson:

Q. They draw a distinction between new mortgages after a certain date in provincial legislation, and mortgages where the original consideration was prior to that date; for instance, in debt adjustment legislation?—A. In as far as farm mortgages are concerned.

Q. And also urban homes?—A. As far as urban mortgages are concerned, the suggestion I made yesterday as to the non-current application of the Act is the only suggestion I can make to deal with that same point.

By Mr. Tucker:

Q. If you made it apply in the case of farm mortgages to all mortgages which were in existence on the date of entry into the membership agreement, it really would not make much difference because there have not been many mortgages entered into in the last six months?—A. Not many new mortgages, a fair number of agreements of sales.

Q. But, of course, we want the Act to apply to that.—A. Not the recent ones, I suggest. I suggest the point Mr. Dunning made is the correct one as to recent agreements of sales.

Q. I suggest those are the ones we want the Act to apply. Take a mortgage foreclosed on a property sold within the last year, that farmer should be entitled to the benefit of the Act just as much as if he bought the property two years ago or three years ago.

Mr. DONNELLY: I do know that in the dried-out areas in the south central part of Saskatchewan adjustments that were made two years ago or three years ago are not considered to-day as adjustments at all, even by the Farmers' Creditors Arrangement Act where they have cut the amount of indebtedness a great deal, it is not a sufficient adjustment to-day as we know things. We have had one crop failure added on top of another.

Hon. Mr. DUNNING: Don't you hope it will turn the other way?

[Mr. T. D'Arcy Leonard, K.C.]

Mr. DONNELLY: We have been hoping for ten years, and it is a long time, and if you write off 10 per cent every year off these farms you have got the whole 100 per cent written off now.

Hon. Mr. STEVENS: You will start to make money now.

By Mr. Cleaver:

Q. Mr. Leonard, the minister had indicated that your suggestion in regard to non-current urban mortgages is not satisfactory to him. Would a clause confining the operation in regard to urban mortgages—mortgages based on the ability of the debtor to pay—or a bankruptcy clause answer your problem?—A. I do not think so, Mr. Cleaver.

By Hon. Mr. Stevens:

Q. Mr. Leonard, I was going to ask you this question: agreeing that there is a difficulty in determining the cut-off date, would it be correct to say that individual companies positions would be from their standpoint a determining factor; that is, one factor would differ from another?—A. That is true, all the way through.

Q. Would it be advisable—and I will ask the minister to consider this—would it be advisable to have a clause later in the agreement which would be applicable to the whole agreement authorizing the board or the mortgage bank, in its individual agreements, to set a date based upon the exigencies of the case, of the individual company's case, but not to exceed a certain cut-off date which might not be two years—the maximum might be much more than two years—but there might be in each case a different date that the circumstances would warrant.

Hon. Mr. DUNNING: I can see great difficulty in applying it.

The WITNESS: If I might answer Mr. Stevens' question to the effect that there may be different circumstances affecting different companies, I should think the matter ought to be decided from the standpoint of the debtor and not from the standpoint of the company, so that the debt should be only applicable from the standpoint of the purchasers.

Hon. Mr. STEVENS: You think it is possible to find a common date?

The WITNESS: I think there must be some recent date that in the ordinary judgment of a person appears natural. For example, an agreement entered into to-day could not come under this Act; the man is buying the mortgage in the light of certain circumstances, and there must be some period going back. I would not like to say what period it would be or whether it would appeal to this committee as being a date on which contracts entered into since that date should just stand there.

Hon. Mr. DUNNING: And I say that I have a similar amendment in relation to urban mortgages. The intention is to insert a cut-off date in both cases. I only read the one relating to that part of the section dealing with farm mortgages, but I have another one here to bring about a cut-off date also in connection with urban mortgages. I admit it is highly desirable to set a date, but I am more or less in the judgment of the committee as to how far back it should go.

Mr. CLEAVER: Would this date apply to renewals in the same light as new mortgages?

Hon. Mr. DUNNING: If the renewal is a new contract, yes.

Mr. THORSON: If the renewal is a new contract, but if it is just a renewal agreement of the old debt exactly as it was; there is a difference.

Hon. Mr. DUNNING: That is where our definition would have to come in because provincial laws differ in regard to renewals.

Mr. MACDONALD: It might be a renewal as to principle with a change of terms as to interest.

Hon. Mr. DUNNING: Yes.

Mr. TUCKER: I submit there should be a different attitude taken towards rural mortgages over urban, because as Mr. Leonard says, there has been very little activity in regard to rural lending in the last year, and the main activity has been where there have been resales of property. I do not know whether it is true here or not, but I know that a great many resales that take place are cases where there have been foreclosures and resales the amount the company has tied up in the property to a member of the family. Now, it seems to me that these people need an adjustment just as much as if it were still in the shape of a mortgage. There is practically no new business. It seems to me in regard to rural matters the clause should be left as it is without any adjustments to the companies, and it might prevent some people being excluded who otherwise should get the benefit of the Act. I realize it is difficult in regard to urban mortgages.

By Hon. Mr. Dunning:

Q. I suppose, Mr. Leonard, one could say with respect to farm mortgages that there has been very little in the way of new contracts. It would not be of much material importance in regard to them?—A. That is correct, Mr. Dunning, as far as farm mortgages are concerned.

Q. Now, I have two separate amendments to the two separate sub-sections which can have, if the committee so desires, different dates inserted for the two different classes. Might we not say the first of this year for farm mortgages and then consider the question of the other when we have cleaned that out of the way?

Mr. MAYBANK: There is this point with regard to that matter; in the first place I was of the opinion that probably there is no need to have a cut-off date very far in the past in respect to rural mortgages; likewise it would seem we should have a cut-off date with regard to urban ones, but it seems to me that that date should be the cut-off date only with reference to some of these adjustments, some of the contributions of the companies, but not all. There is the writing off of two years' interest, and the other is giving. But in respect of agreements which they will make that mortgages hereafter should not be higher than a certain rate of interest which, for example, we will say is 5 per cent, I do not think the cut-off date should apply there. Suppose I might say as an example that the mortgage is entered into before the 1st of January, 1937—

Hon. Mr. DUNNING: You are speaking now of urban?

Mr. MAYBANK: Yes.

Hon. Mr. DUNNING: Let us clear up the rural part first.

Mr. MAYBANK: This applies to both, although I was using the urban as an illustration. Whatever date is chosen it should not have reference to any contracts entered into after that date. That is the 5 per cent hereafter feature. That is the point. That applies whether it is rural or urban. In that case the urban would probably be fixed at an earlier date. I was using that as an illustration. I do not think we ought to be in a position with respect to urban mortgages, having chosen, perhaps, the 1st of January, 1937, having mortgages between that time and the date that will be declared in the Act carrying one rate of interest and everything thereafter urban carrying a different rate. The same applies exactly with reference to rural, although I realize that date would be later in the case of urban. I am referring to the hereafter interest rate. I say the adjustment there ought to cover everything.

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. DUNNING: Here is my first amendment: "That sub-paragraph (i) of paragraph (a) of clause 16 of the Bill be amended by inserting after the word 'agreement' in line 26 on page 5, the following words: 'And entered into before the 1st day of January, 1939.'"

That will establish the cut-off date for the farm only.

The CHAIRMAN: Shall the amendment carry?

(Carried).

Mr. CLARK: May I ask if this means that in the case of a particular company—take the Canada Permanent Mortgage Corporation and suppose it becomes a member and is a membership company, will this mean that all its mortgages will be adjusted to 5 per cent?

Hon. Mr. DUNNING: All its mortgages operating within the classes dealt with in this section; that is all its farm mortgages and all its non-farm home mortgages on which the amount owing does not exceed \$7,000.

Mr. CLARK: They will all be reduced to 5 per cent.

Hon. Mr. DUNNING: Yes.

Hon. Mr. CAHAN: I would like to ask this question: Section A-1 deals with farm mortgages. Taking (a) with (d) and reading them together they provide that the member companies shall adjust all their mortgages on farms in Canada and held at the date of the membership agreement so as to reduce the total amount owing on the mortgage to 80 per cent of the fair value of the property appraised as provided in this Act. Now, I would like to ask the minister if it is the intention of the government in making a provision for such reduction to disregard entirely the ability of the mortgagor to pay irrespective of the value of the particular piece of real estate which is mortgaged?

Hon. Mr. DUNNING: The only criterion contemplated by the law is the value of the property.

Hon. Mr. CAHAN: Is it the intention to adhere to that?—A. If it is, it is useless to discuss the matter further.

Hon. Mr. DUNNING: I will not say it is useless to discuss it. Perhaps I might indicate to you the difficulties we face if we are dealing with this thing in a nation-wide manner. It is quite impossible and impracticable, as far as I can see, and I have tried very hard to see a way in which adjustments could be made which take into account each separate individual's ability to pay; it would necessitate the setting up of some form of judicial tribunal analogous in character, possibly, to the Farmers' Creditors Arrangement Act method; it would take years of work, and I am inclined to the view would not bring about very great satisfaction to either side, judging from my experience with the Farmers' Creditors Arrangement Act. It is true, as you have urged. Mr. Cahan, previously, that some people would get the benefit of this who might nevertheless be able to pay.

Hon. Mr. CAHAN: A good many.

Hon. Mr. DUNNING: I am of the opinion that the mere cost of trying to set up machinery to determine an individual's ability to pay would far exceed what the state and the mortgage company would lose by virtue of such adjustments.

Hon. Mr. CAHAN: With great respect, I think it would not be more difficult to determine with respect to individual mortgagors ability to pay in a general way than it will be to determine what the fair value of the property is.

Hon. Mr. DUNNING: Oh, very much harder.

Hon. Mr. CAHAN: I think the two considerations are necessary to fair and equitable treatment, and I simply suggest that I dislike to see the matter of his ability to pay eliminated as a consideration in reducing his liability.

Hon. Mr. DUNNING: I dislike to see it worked myself. I agree in principle. The only thing is that I am unable to see how it would be practicable to set up machinery which would have to be judicial or semi-judicial in character, and operating over how long a period I do not know.

Mr. HILL: Irrespective of a man's ability to pay, why should the government of Canada and these companies make a gift to this man of 20 per cent of the value of his property? If a man goes out to buy a farm to-day he pays 100 per cent of the value. Why should the Dominion of Canada and the the companies make a gift of 20 per cent of that value to a man, especially at the present time when that value is going to be very low and the 80 is probably 50 per cent of the value. Now, in addition to that many of the owners of farms on urban properties in the east who are now paying on 100 per cent of the property value in mortgages, will get no relief but will be penalized to the extent that they will have to contribute part of this 20 per cent you are making a gift to this other man who gets relief under this Act. Why should it not be 100 per cent of the value? What you are actually doing is you are buying these properties from these people and selling them back at 80 per cent of the value, and with regard to these other people who won't come under this Act you are simply penalizing them and making them pay a tax to pay this 20 per cent which you are giving to these people who do come under the Act. I cannot see why it should be done, especially at this time.

Hon. Mr. DUNNING: There is, of course, a great deal of force in that argument. I think most of the mortgage companies would agree that there is, generally speaking, little prospect of mortgages amounting to more than 100 per cent of the value of the property being paid. Their experience generally, I think, is that they come back. The 80 per cent provision represents a contribution by the state to putting the mortgage business as a whole upon a reasonably sound basis so far as future expectation of repayment is concerned. One must view it in the general rather than in the particular.

Mr. HILL: Suppose a man has a farm valued at \$7,000 to-day and he has a mortgage of \$5,600 on it, is there anything to prevent him going out and selling it for \$7,000 and taking \$1,400 and leaving the farm?

Hon. Mr. DUNNING: I suppose that may be true.

Mr. MAYBANK: He might not be able to find a buyer.

Hon. Mr. DUNNING: He has to find a buyer who will assume the mortgage too.

Mr. WARD: I know what Mr. Hill means, and most of the members will agree that in a great many cases, perhaps the majority of cases, have a considerable part of the mortgage been paid up. I gave an illustration this morning, and I think you could duplicate it a hundred times. I know of dozens of cases like that of my own knowledge where far in excess of the total value of the property has already been paid and still the mortgage stands at more than the land is worth. I understand we are still discussing farm mortgages.

Hon. Mr. DUNNING: That amendment carried with respect to the cut-off date.

Mr. WARD: I want to return to the question of renewals. My observations of the renewing of mortgages is in a great many cases that they have been renewed at just the amount that stood against the farmer. They have not all come under the Farmers' Creditors Arrangement Act by any means. In view of the fact that in this Act the general provision has been made—what we might call qualifications; that is, that a mortgage must qualify before it can be considered under this Act—in view of that fact there is no reason whatsoever why the cut-off date or why the mortgage should not be considered for

[Mr. T. D'Arcy Leonard, K.C.]

the purposes of this legislation as at the original date when the mortgage was made. I think that point should be cleared up before we proceed. The mortgages should be considered as of the original date when the mortgage was made in view of the fact that within the four walls of this Act qualifications are provided which would safeguard any adjustments that had been made at the time of renewal. Why should we not insert in this Act somewhere that all mortgages shall be considered as of the original date, and that would be considered when the cut-off date is set.

Mr. TUCKER: That is what this means.

Mr. WARD: I do not think so.

Mr. MACDONALD: I find that the question raised by Mr. Cahan and Mr. Hill is well taken, and so does the minister. Here is a man living in a city and he has one investment on a farm. He has considerable other assets, maybe in bonds or cash or otherwise and he has entered into a contract, borrowed, say, \$5,000 on his farm and given a mortgage which is more or less the same as a security, and now the farm happens to be worth only \$4,000. With all his other assets he cannot be called upon to meet his obligation to pay that \$5,000. As the minister has said, that feature does not seem entirely fair, but the difficulty I find is how to work out something that is practicable.

Hon. Mr. DUNNING: That is it.

Mr. MACDONALD: If something could be worked, I think the minister would consider it, but there does appear to be a difficulty.

Mr. CLEAVER: Would not Mr. Hill's suggestion be a practical answer? Increase sub-section D from 80 to 100 per cent.

Hon. Mr. DUNNING: Leave that until we get to it. Don't let us mix up the sections.

The CHAIRMAN: We are now really considering sub-paragraph 2 of paragraph (a) of clause 16.

Hon. Mr. DUNNING: I would like the committee to consider what cut-off dates should be put in for urban mortgages.

Mr. THORSON: The 1st day of January, 1938.

By Hon. Mr. Dunning:

Q. I would like to ask Mr. Leonard if he can tell us when it was with respect to renewals and new contracts on homes of this type that what I might call the impact of cheaper money first became apparent in the business of the mortgage companies? There was a time at which the general impact of easy money did affect the mortgage field. Can you tell me when—perhaps some of your colleagues could tell you?—A. Without any further consultation than I have made, Mr. Dunning, I would not like to be taken as saying that a cut-off date will meet the points I have made in connection with it, but just answering your question, the date suggested is the 1st of January, 1935. You will recall the Housing Act of 1935, with the 5 per cent rate, and it was about at that time that the 5 per cent rate became the prevailing rate.

Mr. THORSON: That is too far back.

Hon. Mr. DUNNING: That is a suggestion for the committee to consider. I would have said myself that the effect of the Housing Act would not have been likely at least until 1936, because I remember when I became minister practically no loans had been made under it.

Hon. Mr. STEVENS: Very few were made anyway.

Mr. THORSON: Very few have been made since that time.

Hon. Mr. DUNNING: I suggest the 1st of January, 1936.

Mr. THORSON: That is too early.

Mr. MAYBANK: Why 1936? Why should we go back on urban mortgages as far as that?

Hon. Mr. DUNNING: I will answer your question by asking you one. You represent a city constituency; a great many people in that constituency presumably will be affected by this legislation; you are anxious, therefore, as far as possible, within the bounds of reason, to make it possible for a class of companies which carry that class of mortgage in large volume to become members of this bank so that your people may get the benefit.

One of the chief difficulties that will arise is the fact the the balancing of the mortgage investments of companies varies so very widely. Some companies specialize in the smaller type of urban homes; some companies have a very much heavier ratio of farm mortgages. The balance is a very important factor, and so far as my study goes, there are about three companies with large investments in the smaller type of urban homes covered by this act, that it is very desirable should become member companies because of the benefits which would accrue, particularly in constituencies like your own; and I am trying to find the way, not to set up an idealistic piece of legislation which won't work, but keeping it within the bounds of reason so it will operate.

Mr. THORSON: If you put a date like the 1st of January, 1936 and include any mortgages after 1936, all of those with respect to which renewals have been made, you are wiping out from the application of this act a whole mass of mortgages. Now, if there is a real difficulty between the rural situation and the urban situation, and if it desired to get as many companies as possible to come within the ambit of the act, the purpose might be accomplished better by differentiation between the maximum rate of interest between urban and rural mortgages. Now, that is to be considered later in connection with section 5 (f) and (g), and you might accomplish the purpose better if the idea is to get as many people as possible, the maximum companies to come into the scheme, it might be better to consider the possibility of differentiation between the maximum rate of interest applicable to farm mortgages and that applicable to urban mortgages, rather than trying to do it by a cut-off date.

Hon. Mr. DUNNING: I am trying to bear it in mind all the time.

Mr. THORSON: It might remove from the ambit of the act altogether a great mass of urban.

Hon. Mr. DUNNING: What cut-off date do you suggest?

Mr. THORSON: I am not so sure that the cut-off date is so tremendously important.

Hon. Mr. DUNNING: It is quite important; I assure you it is.

Mr. THORSON: It might be important.

Mr. MAYBANK: It is the thing that will make it work or not work.

Mr. THORSON: Of course, you are going to have your controversy as to the meaning of the language of your amendment which was carried before. Does that mean a new mortgage or does it mean an extension of existing mortgage?

Hon. Mr. DUNNING: That is the reason it is framed as it is. Mr. Johnson will probably give the legal answer.

Mr. THORSON: I suppose you are going to define it later by regulation?

Hon. Mr. DUNNING: Yes. Mr. Johnson will deal with that point.

Mr. JOHNSON (Department of Finance): The intention, when this amendment was drafted, was to include new mortgages only.

Mr. THORSON: New only?

Mr. JOHNSON: Yes, mortgages entered into.

[Mr. T. D'Arcy Leonard, K.C.]

Mr. MAYBANK: Which amendment are you referring to?

Hon. Mr. DUNNING: The amendment that is now under consideration with respect to both.

Mr. THORSON: That would leave subject to adjustment mortgages in respect to which there is a renewal agreement?

Mr. JOHNSON: Yes.

Hon. Mr. DUNNING: That was the intention.

Mr. THORSON: That is what it means?

Hon. Mr. DUNNING: This carries it legally into effect.

Mr. THORSON: You have always got the power to a certain extent to change that by defining.

Hon. Mr. DUNNING: We have in mind that fact, "entered into." Does that not eliminate a large part of your objection?

Mr. THORSON: It does, so far as the cut-off date is concerned.

Hon. Mr. DUNNING: So far as that is concerned only. I am only considering it from that point of view now.

Mr. THORSON: If it is clearly understood that is the meaning of entered into, that would eliminate the objection to the cut-off date.

Hon. Mr. DUNNING: There is no doubt about that. What shall we say? I have my pen in hand ready to write in the date. Mr. Stevens, have you any comment? Mr. Cahan, have you any comments?

Hon. Mr. STEVENS: I think your date is—

Hon. Mr. DUNNING: Mr. Cahan, what about you?

Hon. Mr. CAHAN: I think the date is 1935 you are suggesting now?

Hon. Mr. DUNNING: 1936.

Hon. Mr. CAHAN: I think that is preferable. It does not meet my objection, but it is preferable.

Mr. THORSON: If you are thinking of the impact of the Housing Act as being the 1st January, 1936, I question it. I do not think you can look at the Housing Act as your criterion because it did not have any impact for the 1st January, 1936.

Mr. MAYBANK: It had not begun to march at all.

Mr. THORSON: In 1936.

Hon. Mr. DUNNING: Mr. Ross wanted to suggest something.

Mr. ROSS: I want to know why the limit was set.

Hon. Mr. DUNNING: We are not on that point.

The CHAIRMAN: We will settle this date first. What date, Mr. Dunning?

Mr. THORSON: You came in as minister in the fall of 1935.

Hon. Mr. DUNNING: Yes.

Mr. THORSON: You stated a moment ago at that time there had been no mortgages. I do not think you can say that the Housing Act had any real effect or any impact by the 1st January, 1936, so that I think your date is too early.

Hon. Mr. DUNNING: Well, I am willing to leave it to the committee as between 1936 and 1937.

Mr. THORSON: I would say 1937.

Mr. MAYBANK: What I should like to get at is this: a while ago I asked why he picked 1936. I was not doing it just captiously. I presumed there had been some balance set when Mr. Dunning undertook to describe it. Personally I do not think there was very much mortgage loaning going on in my own neighbourhood,—that is the one I know best—during certain years.

I do know that not very much loaning went on there. Up to the 1st January, 1936, very little loaning had been done. Can we get any information here now as to the number of mortgages or the number of contracts that were entered into from 1936 onwards?

Hon. Mr. DUNNING: Quite impossible, I am afraid.

Mr. MAYBANK: We have not got that?

Hon. Mr. DUNNING: No.

Mr. MAYBANK: It is quite impossible to get any of that sort of information to help us to balance the matter to arrive at the date?

Hon. Mr. DUNNING: We do know that following the depression, coincident with the operations of the Housing Act, commencement of the full operation of the Housing Act, which is really only part of what I meant when I asked Mr. Leonard regarding the impact of the cheaper money. The whole set up was made much cheaper. Money was looking for investments to a greater degree and having difficulty in finding them. I personally think that the 1st January, 1936, is a fair date, having regard to that condition and remembering that it applies to a new contract.

Mr. MAYBANK: Yes.

Mr. THORSON: It applies only to mortgages where there is a new advance?

Mr. MAYBANK: The whole of the consideration is new.

Mr. THORSON: The whole of the consideration is new.

Mr. MAYBANK: I should like to see the effect on section 8. In section 8 we say we shall not charge more than 5 per cent. That is what we have been talking about. I am putting it roughly this way: shall not charge more than 5 per cent on mortgages after the date of the agreement. Now, you proclaim this law. Shall we place the 1st September and then this law is in the nature of an offer to mortgage companies, which says, you can take this proposition up within the next twelve months. If you do not take it up, well the goblins will get you; provincial premiers will get you if you do not take it up within twelve months, so that one year from September—

Mr. DONNELLY: You will be thrown to the wolves.

Mr. MAYBANK: Thrown to the wolves; one year from September 1 this year they will all have entered into the agreement or else there will be no agreement. Then we would have a period of between the 1st January, 1936, and the 1st September, 1940, during which there would be mortgages that would not be adjustable as we have used the word "adjust" in this act; and right after the 1st September, 1940, any mortgages written by these companies would be at 5 per cent. They would have that block of mortgages between 1936 and 1940 which would not be adjustable; although entered into right afterwards they would not be above 5 per cent, and those before that date would be adjusted down to 5 per cent. That is the factor.

Mr. TUCKER: The rate fixed by the bank.

Mr. MAYBANK: I know, and that is why I am talking that way. We would have this situation; we would have the years 1936, 1937, 1938, 1939 and up to the 1st September, 1940, mortgages that could carry whatever rate of interest they could get.

Hon. Mr. DUNNING: Have you taken this into account—

Mr. MAYBANK: I am only asking if that is the picture?

Hon. Mr. DUNNING: That is approximately correct. Have you taken into account the fact that the great fall in real estate values—and I am now speaking of urban values—certainly took place prior to 1936, didn't it?

Mr. THORSON: Yes.

Hon. Mr. DUNNING: Prior to 1936.

(Mr. T. D'Arey Leonard, K.C.)

Mr. MAYBANK: Yes, I think that is right.

Hon. Mr. DUNNING: We are trying to find a fair date, having regard to all the conditions. I suggest that 1936 is a good date.

Hon. Mr. CAHAN: Let us have a motion.

Mr. CLEAVER: I would move the amendment carry as of the 1st January, 1936.

Mr. ROSS: When Mr. Leonard said that the easy money of 1935 was the result of the Housing Act even though no loans to speak of were made under the act, I would like to correct the impression that it was the Housing Act that caused—

Hon. Mr. CAHAN: The incident.

Hon. Mr. DUNNING: I mentioned it as one incident.

Mr. ROSS: The question I should like to ask the minister is this: why limit it to the \$7,000 mortgage?

Hon. Mr. DUNNING: If we can carry this amendment we can discuss that point.

The CHAIRMAN: Mr. Dunning moves "That sub-paragraph (ii) of paragraph (a) of clause 16 of the bill be amended by inserting after the word "agreement" in line 28 on page 5 the following words: 'and entered into before the first day of January, 1936.'" Shall the amendment carry?

Carried.

Hon. Mr. DUNNING: Now, the other point raised by Mr. Ross is the \$7,000 figure.

Hon. Mr. STEVENS: We have not come to that yet.

Hon. Mr. DUNNING: It is in 2. Now, there is one point that has arisen in connection with since the bill was drafted, namely, that in one province particularly there are family dwellings that are two-family dwellings. They are built as two-family houses.

Hon. Mr. STEVENS: Duplexes.

Hon. Mr. DUNNING: And we should take that into account without attempting to go into the larger field. Mr. Ross put up four figures. One could put up twelve fingers if one had them, and get into the apartment field. The duplex is recognized as a family type of dwelling in at least two provinces, and so I was thinking of suggesting to the committee that we amend the \$7,000 in this wise, "\$7,000 for a single family house and \$12,000 for a two-family house." But I do not think we had better wander on into the quadruplexes and sextuplexes.

Mr. THORSON: You have a dangerous situation there because you may make that applicable to a state of affairs where there has been a crowding of a number of families into one house without any division of the house, so that one belongs to one part of the house and another part of the house belongs to another family and another part to another.

Hon. Mr. DUNNING: There will be no doubt that this means two separate houses.

Mr. CLEAVER: I would move that the amendment carry, Mr. Chairman.

Mr. THORSON: If it is clearly understood.

Mr. ROSS: I have another point in mind. We have had a great many apartment houses which have been put up on bonds that have been sold. These bonds are held in a great many cases by individuals. I do not think it is wise for us even to limit it to that amount. Why should we limit it?

Mr. THORSON: What is the amendment?

The CHAIRMAN: The amendment reads: "That sub-paragraph (ii) of paragraph (a) of section 16 of the said bill be amended by adding after the word

'dollars' in line 30 on page 5 the following: 'seven thousand dollars for a single family house and twelve thousand dollars for a two-family house.'" Shall the amendment carry?

Carried.

Hon. Mr. CAHAN: There are a lot of people, Mr. Chairman, in business who have houses that are worth more than \$7,000 and who had them free, but in recent years in order to pay their debts in business and personal debts, have placed mortgages upon their property for more than \$7,000. Why should we discriminate against these people? If there is to be a general sabbatical year in which we are going to wipe—

Hon. Mr. DUNNING: I was hoping I might get by without that question. There must be a line somewhere.

Mr. Ross: I do not see why we should discriminate in this country against one class of citizens.

Hon. Mr. DUNNING: This is intended for the benefit of home owners and farmers, and frankly that is the intention.

Hon. Mr. CAHAN: A man may be quite well off and still have a home.

Hon. Mr. DUNNING: If he is quite well off he does not need this.

Hon. Mr. CAHAN: No man needs this who has ability to pay.

Hon. Mr. DUNNING: I sympathize with you when you argue on the basis of ability to pay, but when you are asking me now that to extend this to the man who has undoubtedly the ability to pay, I suggest that it is hardly consistent.

The CHAIRMAN: On subsection (b).

Carried.

On subsection (d).

Hon. Mr. DUNNING: We are now on the 80 per cent. Mr. Hill has a motion.

Mr. HILL: I move that the 80 per cent be raised to 100 per cent.

Hon. Mr. DUNNING: There will be much difference of opinion there as to whether the write-down should be below the value of the property.

Hon. Mr. CAHAN: This is simply a gift outright, as one of the hon. members for New Brunswick said, an outright gift. Why should you place the burden upon the body politic of making an outright gift of 20 per cent?

Mr. THORSON: One of the fundamental principles of the bill—

Hon. Mr. DUNNING: Will you really solve the farm mortgage problem unless you create an equity?

Mr. THORSON: You must create an equity.

Mr. TUCKER: I was just going to say this: if we are going to deal with the 100 per cent clause I think it is out of order, because I think it cannot be argued that the principle was carried when second reading was given to the bill. The 80 per cent was one of the fundamental principles of the bill and it was so stated by the minister in explaining it in the house. We have no right whatever to pass an amendment which conflicts with one of the main principles of the bill as passed on second reading. If we make an amendment there we might as well adjourn and save ourselves trouble so far as helping the farmers in this country is concerned. By that I mean if we pass the 100 per cent amendment—

The CHAIRMAN: Order, Mr. Cahan would like to say something.

Hon. Mr. CAHAN: I simply object to that statement that the passing of the bill in second reading confirms this 80 per cent or any other special item. I understood when the second reading was passed that it passed for the purpose of submitting to this committee all phases of the bill and we were not, by

[Mr. T. D'Arcy Leonard, K.C.]

passing second reading, committed to all the incidents of the bill. I do not think it is a proper way to look at it.

Mr. TUCKER: This surely is a fundamental principle.

Hon. Mr. CAHAN: It is not a fundamental principle that has ever been asserted during the 15 years that I have been a member of parliament.

Mr. COLDWELL: I have not said very much but I have listened very intently to what has been going on. It seems to me the purpose of this bill is to do something for a class of people in connection with their indebtedness. I expressed the point of view the other day and I will express it again, that when these mortgages were placed upon farms, upon farm lands particularly—I have that in view—the appraisal of the property was made by the company, and as a rule they loaned 60 to 40 or 50 per cent of the valuation they placed upon that property. Now at that time the two parties to the mortgage were the mortgage company and the farmer. The mortgage company had a 40 per cent interest in the property and the mortgagor had a 60 per cent interest in that property. If we are going to make an adjustment which is in the interests of those who are in debt we ought to preserve some equity of the debtor; and to suggest that we are going to wipe out any equity in that property as far as the debtor is concerned, is, in my opinion, wrong.

Hon. Mr. DUNNING: I think that is not put fairly, Mr. Coldwell. At the present time the equity is wiped out; we are attempting to restore it.

Mr. COLDWELL: Yes. I will grant that to the Minister of Finance.

Hon. Mr. DUNNING: That is a very important difference.

Mr. COLDWELL: Yes, there is a difference there; but nevertheless the argument is this, and I do not think the view is sound in principle, that here we have something in the nature of a partnership and the equity of the person who has brought that piece of land from a piece of raw prairie up to a farm is greater than that of the company which loaned the money on that land. I think that the very minimum consideration that should be given to the person who is mortgaged is this 80 per cent. When you raise it to 100 per cent all you do it take the value of the property and say, you had all the value of the property. I do not think it is sound or fair. I should like to go much further than that. May I say this, as I have often said before, that in my opinion it is in the interests of the mortgage companies themselves to be generous in the adjustments that have to be made. We have had debt adjustment in western Canada. I have before me at the moment the last estimates of debts made by the economist who produced the section on debts in the Saskatchewan brief before the Rowell commission. He showed this, that after the adjustments that were made two years ago with two years more of difficult times, the debt to-day is exactly what it was two years ago, that there really has been no relief to the people on the Saskatchewan farms. Now, in the other provinces the situation may be somewhat different; but I am here representing a Saskatchewan constituency and I want to impress upon this committee this particular point: in my opinion even this measure offers very little hope to a large number of the debtors of the province, and if the obligation placed upon them is greater than that proposed by this bill it will work against the very institutions that are endeavouring to solve something in this legislation.

Mr. HILL: Mr. Chairman, I have had a number of young men buy farms in the county in the last few years they paid 100 per cent for them, not 80 per cent. They were not given any 20 per cent by anybody; they paid 100 per cent for that farm. If the minister will guarantee to me that the farm owners in the maritime provinces will have their mortgages adjusted to 80 per cent of the value of these farms, I will not oppose this act; but I do not believe it will ever be done in the maritime provinces, because these people intend to pay their mortgages and they will do it some way or another. They will do it or they

will give up their farms and let somebody else take them over. If you can guarantee me that these farm mortgages will be adjusted to 80 per cent of the present day value of these farms I will certainly support this act; but I do not believe it will ever be done for this reason, that the mortgage companies holding these mortgages will never reduce the value of the mortgages nor the interest rates on these mortgages, because they will not be forced to, because they will not be members of this bank and therefore they will not have to do that and the people down there will have to get along and pay the full amount of their mortgages at the full rate of interest.

Mr. KINLEY: Mr. Chairman, in talking about the 80 per cent clause it is said that it is for the protection of the general public, and Mr. Coldwell talks about the advantage to the loan companies. I quite agree with that, but you have to do something for the protection of the taxpayers who have other assets and own property. I can see where you would have a lot of city properties which have mortgages on them. They would be reduced, but the owner of these properties may have sufficient assets outside of them to pay his debts and he should pay his debts if he can. Now, with regard to the adjustment feature. The only thing so far as the loan companies in Nova Scotia are concerned is that there is an appreciable percentage of them who have mortgages on property 60 per cent of the value of the property. By this suggestion, you are bonusing the man who is not standing up to his obligation and you penalize a man who has lived up to his obligation. That brings up a kind of philosophy that does not agree with my idea of what business should be in this country.

Mr. TUCKER: On a point of order, I will read the speech that the minister of finance made in the house on May 23rd, 1939, and I intend to ask for a ruling on this point of order, because when we do business in the house presumably we do it in a proper way. The minister said, explaining this bill:—

Briefly, the principle involved is the use of the national credit in adjusting the mortgage burden and in providing facilities for refinancing mortgages in the future.

This statement is to be found at page 4691. He goes on to state:—

The bill offers to the farmer mortgage debtor, and the home mortgage debtor, below \$7,000 in principal amount, a reduction in the load, which was assumed in many cases years ago under more favourable circumstances than now prevail. The companies which become members of the bank will be obligated to write off all arrears of interest with respect to such mortgages in excess of two years' interest.

Second, the debtor will be relieved in cases where the mortgage debt exceeds eighty per cent of the value of the mortgaged property by the writing off of the excess over eighty per cent.

Third, the debtor will be relieved by the adjustment of the future rate of interest on his mortgage in those two classes I have mentioned to five per cent per annum, and an adjustment in the length of the term of the mortgage.

Mr. Dunning stated in so many words that the 80 per cent clause is one of the principles of the bill. Now, Mr. Chairman, I submit this amendment is entirely out of order.

Mr. DONNELLY: Question.

Hon. Mr. DUNNING: There is no amendment before the committee at the present time as I understand it.

Mr. TUCKER: Yes. Mr. Hill moved an amendment.

Mr. CLEAVER: Mr. Hill has moved the amendment, Mr. Chairman, and I rise to support his amendment. I do not think that this bill was referred to this

committee with our hands tied and that we can do nothing to it. I think the work of the committee would be absolutely futile if we could not amend any clause of the bill in accordance with the wishes of the majority of this committee. Now, I think it is fairly accurate when I state that as to the mortgages in the western provinces practically all of them are held by companies. As to the mortgages in Ontario, Quebec, and the maritime provinces, all of them are held by individual mortgagees or—

Mr. DONNELLY: That is not correct.

Mr. CLEAVER: —or by loaning provincial institutions.

Hon. Mr. DUNNING: There are \$240 million held by institutions in Ontario.

Mr. CLEAVER: On farm mortgages?

Hon. Mr. DUNNING: All mortgages.

Mr. CLEAVER: I am referring to farm mortgages. I believe I am practically correct when I say that all of the farm mortgages in Ontario and Quebec are held either by individual investors or by provincial institutions. Now, Mr. Chairman, it has been indicated to this committee and quite properly so, that as to the provincial loaning institutions this Act is not to apply; it has also been indicated to the committee that it could not apply as to the private mortgagor. Well, that being so, it would appear to me obvious as to why the pressure comes from the section that it does come from with respect to the 80 per cent. I do not think that it is fair that relief should be denied to mortgagors and to mortgagees of Ontario and that Ontario, Quebec and the maritimes should be asked to contribute to the 80 per cent subsidy which the dominion government is prepared to give under this Act.

The CHAIRMAN: It is 6 o'clock, gentlemen; shall we adjourn until to-morrow morning at 11.15.

The committee adjourned to meet Wednesday, May 31, at 11.15 a.m.

APPENDIX

MEMBERSHIP OF THE DOMINION MORTGAGE AND
INVESTMENTS ASSOCIATION

1939

LOAN COMPANIES—(12)

Name of Corporation	Head Office
Canada Permanent Mortgage Corporation.....	Toronto
Central Canada Loan and Savings Company.....	Toronto
Credit Foncier Franco-Canadien.....	Montreal
Guelph & Ontario Investment & Savings Society.....	Guelph
Huron and Erie Mortgage Corporation.....	London, Ont.
Lambton Loan and Investment Company.....	Sarnia
Landed Banking and Loan Company.....	Hamilton
Montreal City & District Savings Bank.....	Montreal
Mortgage Company of Canada.....	Winnipeg
Netherlands Investment Company.....	Winnipeg
Ontario Loan and Debenture Company.....	London, Ont.
Trust and Loan Company of Canada.....	Montreal

TRUST COMPANIES—(14)

Name of Corporation	Head Office
British Mortgage & Trust Corporation of Ontario.....	Stratford
Canada Permanent Trust Company.....	Toronto
Canada Trust Company.....	London
Capital Trust Corporation.....	Ottawa
Guaranty Trust Company of Canada.....	Windsor
London & Western Trusts Company Limited.....	London
National Trust Company, Limited.....	Toronto
Osler & Nanton Trust Company.....	Winnipeg
Royal Trust Company (The).....	Montreal
Sterling Trusts Corporation.....	Toronto
Toronto General Trusts Corporation.....	Toronto
Trusts & Guarantee Company, Limited.....	Toronto
Victoria Trust & Savings Company.....	Lindsay
Waterloo Trust & Savings Company.....	Kitchener

INSURANCE COMPANIES—(24)

Name of Corporation	Head Office
Toronto Mutual Life Insurance Company.....	Toronto
Canada Life Assurance Company.....	Toronto
Confederation Life Association.....	Toronto
Continental Life Insurance Company.....	Toronto
Crown Life Insurance Company.....	Toronto
Dominion Life Assurance Company.....	Waterloo
Dominion of Canada General Insurance Company.....	Toronto
T. Eaton Life Assurance Company, Limited.....	Toronto
Equitable Life Insurance Company of Canada.....	Waterloo
Excelsior Life Insurance Company.....	Toronto
Grain Insurance & Guarantee Company.....	Winnipeg
Great-West Life Assurance Company.....	Winnipeg
Imperial Life Assurance Company of Canada.....	Toronto
Law, Union & Rock Insurance Company, Limited.....	London, Eng.
London Life Insurance Company.....	London
Manufacturers Life Insurance Company.....	Toronto
Monarch Life Assurance Company.....	Winnipeg
Mutual Life Assurance Company of Canada.....	Waterloo
National Life Assurance Company.....	Toronto
North American Life Assurance Company.....	Toronto
Northern Life Assurance Company of Canada.....	London
Prudential Insurance Company of America.....	Newark, N.J.
Sovereign Life Assurance Company.....	Winnipeg
Sun Life Assurance Company of Canada.....	Montreal

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Banking and Commerce
Branching Bill
1939

SESSION 1939
HOUSE OF COMMONS

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STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

BILL 132

An Act to Incorporate the

CENTRAL MORTGAGE BANK

No. 3

WEDNESDAY, MAY 31, 1939

WITNESS:

Mr. T. D'Arcy Leonard, K.C., General Counsel for The Dominion
Mortgage and Investments Association, Toronto



OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1939



MINUTES OF PROCEEDINGS

WEDNESDAY, May 31st, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Cahan, Clark (*York-Sunbury*), Cleaver, Coldwell, Deachman, Donnelly, Dubuc, Dunning, Fontaine, Hill, Jaques, Kinley, Kirk, Lacroix (*Beauce*), Macdonald (*Brantford City*), Moore, Perley, Ross (*St. Paul's*), Stevens, Taylor (*Nanaimo*), Thorson, Tucker, Vien, Ward, White.

In attendance: Dr. C. W. Clark, Deputy Minister of Finance, Mr. D. M. Johnson, Solicitor to the Treasury, Dept. of Finance, Mr. T. D'Arcy Leonard, K.C., General Counsel for The Dominion Mortgage and Investments Association, and representatives of various Mortgage, Loan, Trust and Insurance Companies.

The Committee resumed consideration of Bill No. 132, An Act to Incorporate the Central Mortgage Bank.

On the point of order raised by Mr. Tucker at the previous sitting with respect to Mr. Hill's motion to amend paragraph (d) of section 16, the Chairman ruled Mr. Hill's motion in order.

Mr. Hill's motion being put, namely "that the eighty per cent adjustment mentioned in line 3 on page 6 be raised to one hundred per cent," it was negatived, and paragraph (d) was adopted.

Paragraph (e) carried.

Mr. Dunning moved that sub-paragraph (i) of paragraph (f) be struck out and the following substituted therefor: "Each mortgage on a farm in Canada shall be adjusted to provide that the rate of interest shall not exceed an effective rate of five per centum per annum,"

Amendment carried.

Sub-paragraphs (ii) and (iii) of paragraph (f) carried.

At 1 o'clock the Committee adjourned until 4 p.m.

AFTERNOON SITTING

The Committee resumed at 4 o'clock.

Members present: Messrs. Baker, Cahan, Clark (*York-Sunbury*), Cleaver, Coldwell, Deachman, Donnelly, Dubuc, Dunning, Euler, Hill, Ilsley, Jaques, Kinley, Kirk, Lacroix (*Beauce*), Landeryou, Macdonald (*Brantford City*), Maybank, Moore, Plaxton, Ross (*St. Paul's*), Stevens, Taylor (*Nanaimo*), Thorson, Tucker, Ward, White.

Mr. Leonard was recalled for a statement and further examination.

The Committee resumed consideration of section 16, sub-paragraph (i) of paragraph (g).

Moved by Mr. Dunning that sub-paragraph (i) of paragraph (g) be struck out and the following substituted therefor: "Each mortgage on a non-farm home in Canada shall be adjusted to provide that the rate of interest shall not exceed an effective rate of five and one-half per centum per annum."

Amendment carried.

Sub-paragraphs (ii) and (iii) of paragraph (g) carried.

Moved by Mr. Dunning that paragraph (h) be struck out and the following substituted therefor: "The member company shall not charge an effective rate of interest on mortgages on farms in Canada and non-farm homes in Canada entered into after the date of the membership agreement where the moneys used in making such mortgages are obtained through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of the membership agreement, in excess of the rate determined by the Central Mortgage Bank in pursuance of this Act and in effect at the time such mortgages or renewals of mortgages are entered into."

Amendment carried.

Moved by Mr. Dunning that paragraph (i) be deleted and the following substituted therefor:

"The member company shall not impose charges or penalties in respect of mortgages on farms in Canada and non-farm homes in Canada entered into after the date of the membership agreement where the moneys used in making such mortgages are obtained through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of the membership agreement in excess of those approved by the Central Mortgage Bank."

Amendment carried.

Paragraphs (j), (k) and (l) carried.

Moved by Mr. Dunning that paragraph (m) be amended by striking out the words "paragraphs (n) and (o) of this section" in line 40 on page 7, and substituting therefor the words "the next succeeding paragraph."

Amendment carried.

Moved by Mr. Dunning that paragraph (n) be deleted and the subsequent paragraphs of section 16 re-lettered.

Motion carried.

Paragraphs (o) and (p)—new paragraphs (n) and (o)—carried.

Moved by Mr. Dunning that paragraph (q)—new paragraph (p)—be amended by adding thereto at the end thereof the following words: "after appraisals have been made or accepted under the provisions of section 17 of this Act; provided however that if any appraisal is revised under the provisions of section 17 of this Act after any debentures have been delivered to the member company the amount of the debentures shall be adjusted in accordance with the revised appraisal".

Moved by Mr. Stevens that paragraph (r)—new paragraph (q)—be amended by inserting after the word "company" in line 43 on page 8, the word "its".

Amendment carried.

Paragraph (s)—new paragraph (r)—sub-paragraphs (i) and (ii) carried.

Moved by Mr. Dunning that sub-paragraph (iii) of paragraph (s)—new paragraph (r)—be amended by deleting the words “and preferred stock” in line 17 on page 9.

Amendment carried, and paragraph (s)—new paragraph (r)—carried as amended.

Section 17.—Moved by Mr. Dunning that subsection (1) of section 17 be amended by adding thereto the following proviso: “Provided that the Central Mortgage Bank may accept, subject to such further investigation as the Central Mortgage Bank may decide to make, an appraisal agreed upon by the debtor and the member company”.

Amendment carried.

Subsection (2) carried and section 17, as amended, carried.

Moved by Mr. Dunning that subsection (1) of section 18 be amended by striking out the words “in accordance with the provisions of paragraph (q) of section sixteen of this Act” in lines 6 and 7, and substituting therefor the words “in respect of amounts written off pursuant to the provisions of a membership agreement.”

Amendment carried.

Moved by Mr. Dunning that subsection (2) of section 18 be amended by striking out the words “in accordance with the provisions of paragraph (q) of section sixteen” in lines 19 and 20 and substituting therefor the words “in respect of amounts written off pursuant to the provisions of any membership agreement.”

Amendment carried.

Section 18 as amended and section 19 carried.

Moved by Mr. Dunning that subsection (1) of section 20 be struck out and the following substituted therefor:—

The Central Mortgage Bank shall determine from time to time the maximum rate of interest which may be charged by a member company on mortgages on farms in Canada and non-farm homes in Canada entered into after the date of the membership agreement where the moneys used in making such mortgages are obtained through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of any membership agreement and such rate shall take effect on publication in the *Canada Gazette*.

Amendment carried and section 20 as amended carried.

Section 21 carried.

Moved by Mr. Dunning that paragraph (a) of subsection (1) of section 22 be amended by striking out the words “under the provisions of this Act” in lines 20 and 21, and substituting therefor the words “pursuant to the provisions of the membership agreement.”

Amendment carried.

Moved by Mr. Dunning that paragraph (b) of subsection (1) of section 22 be deleted.

Motion carried, and paragraph (c) carried.

Moved by Mr. Dunning that paragraph (d) be amended by striking out the words "and which are to be adjusted under this Act" in line 31.

Amendment carried.

Moved by Mr. Dunning that paragraph (e) be amended by striking out the words "and such other matters as it may deem desirable" in line 34.

Amendment carried.

Subsection (2) of section 22 carried.

Moved by Mr. Dunning that sub-paragraph (i) of paragraph (a) of subsection (3) of section 22 be amended by striking out the word "charge" in line 4 and substituting therefor the word "mortgage."

Amendment carried, and sub-paragraph (ii) carried.

Moved by Mr. Dunning that sub-paragraph (iii) of paragraph (a) of subsection (3) of section 22 be amended by inserting after the word "shall" in line 16, the words "from the time the loan is made."

Amendment carried.

Sub-paragraphs (iii) and (iv) carried.

Moved by Mr. Dunning that sub-paragraph (i) of paragraph (b) of subsection (3) of section 22 be amended by striking out the word "charge" in line 38 and substituting therefor the word "mortgage."

Amendment carried.

Moved by Mr. Dunning that sub-paragraph (ii) of paragraph (b), subsection (3) of section 22 be amended by inserting after the word "shall" in line 48, the words "from the time the loan is made."

Amendment carried.

Sub-paragraphs (iii) and (iv) carried and section 22, as amended, carried.

Section 23 to section 30, both inclusive, carried.

During the above consideration of the bill, Mr. Leonard was called and questioned.

At 6 o'clock the Committee adjourned until to-morrow, Thursday, June 1, at 11.15 a.m.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

Room 277.

May 31, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m. The Chairman, Mr. W. H. Moore, presided.

The CHAIRMAN: Order. Discussion was on section 16, subsection (d). Mr. Hill moved that the 80 per cent clause in that section be raised to 100 per cent. Mr. Tucker raised a point of order stating that we have no right whatever to pass an amendment which conflicts with one of the main principles of the bill, as passed on second reading, and asked for a ruling of the chair as to whether or not the amendment was in order. The chair rules that the amendment is in order. Is it your desire to vote on the amendment?

Mr. MACDONALD: Before the amendment is voted on, may I say that it occurs to me that there is no reason why the people of the dominion of Canada should generally take a loss on a lot of poor investments that probably some companies have entered into. We have at the present time in this dominion the railway problem, and if my memory serves me correctly the government of this country took over the railways, and in taking over the railways they did not enter the market and buy them as a bankrupt concern. The ones they took over they paid the bonds 100 per cent. These bonds to a large extent were held by large financial corporations; and the great debt we have in Canada to-day with regard to the railways is caused almost entirely by the interest which we are paying on these bonds which were taken over 100 per cent, and which should have been taken over at a fraction of their value. If those bonds had been taken over at their market value to-day my opinion is there would be no deficit in the Canadian National Railways. Our deficit is running about \$50,000,000 a year, which is about the indebtedness on the bonds which were taken over.

Hon. Mr. STEVENS: Mr. Macdonald, do not let us precipitate a discussion on the Canadian National Railways, because there is a sharp cleavage of opinion there.

Mr. MACDONALD: I am not going into the Canadian National Railways; I am merely pointing out here to the committee that fact. We have this terrific debt to-day, which we are carrying, and now it is suggested we should go further into debt.

Hon. Mr. STEVENS: I do not agree with your reasoning and I do not want it to go on the record as the accepted course of reasoning.

Mr. MACDONALD: The fact remains we have this indebtedness which the Dominion of Canada is forced to pay and which the finance minister must raise by way of taxation.

The bill proposes that the mortgages be reduced to 80 per cent of their market value.

Hon. Mr. DUNNING: No, of the value of the property.

Mr. MACDONALD: That the mortgages be revalued, or the property be revalued and the principal to be fixed at 80 per cent of the revaluation. It is further proposed by section (g) that the government pay half the loss that is incurred by the reduction, which means when the mortgages are reduced to 80

per cent of the value that there is a 20 per cent loss, that the companies bear 10 per cent of the loss and that the government bears 10 per cent of the loss.

Mr. KINLEY: More than that.

Mr. MACDONALD: The mortgages to be revalued at 80 per cent of their value.

Mr. HILL: No.

Mr. MACDONALD: The company pays half the loss incurred and the government pays half the loss incurred, that is what section (q) says.

Mr. HILL: Mr. Macdonald, it is not 80 per cent of the value of the mortgage; it is 80 per cent of the value of the land. The mortgage may be based on 200 per cent value of the land.

Mr. MACDONALD: The mortgage revalued at 80 per cent of the value of the land, and that is to be the fixed principal from then on.

Mr. VIEN: Of the then value of the land

Mr. MACDONALD: Appraised.

Mr. VIEN: So, as Mr. Hill says, it might be much more than 20 per cent. If you have a mortgage of \$100,000—

Hon. Mr. DUNNING: No, not as big as that under this legislation.

Mr. VIEN: Let us say \$5,000. You have a mortgage of \$5,000 and you—

Hon. Mr. DUNNING: And the property is worth \$1,000.

Mr. VIEN: The property was valued for the purpose of the mortgage when made—let us say the property was worth \$8,000, and now by revaluation you bring it to a fair value as appraised of \$3,000. In that way you will find that the mortgage will be reduced to 80 per cent of \$3,000. Eighty per cent would be \$2,400, therefore your \$5,000 mortgage may be reduced by \$2,600, which is more than 50 per cent of the face value of the mortgage. I am taking an excessive case. I am not sure that there are not properties which were valued some eight or ten years ago at \$8,000 that could hardly be fairly appraised at more than \$2,400 or \$2,500 to-day in certain parts of the country. Therefore, if I read the section aright, Mr. Hill is right in saying that the reduction, of which the company and the country are each supposed to pay 50 per cent, may be far in excess of the 20 per cent referred to.

Hon. Mr. DUNNING: The two things are not relative at all. I mean to say, the comparing of a given percentage. When you do that you are comparing things that are not comparable; that is all. You are quite right, Mr. Vien. The reasoning of Mr. Macdonald is comparing things which are not comparable, percentages with actualities.

Mr. VIEN: He stated the reduction would be more than 20 per cent.

Hon. Mr. DUNNING: It would go far beyond that and it might not be as much as that, and will not be anything in the great majority of cases.

Mr. MACDONALD: There is no doubt that it might be considerably more than 20 per cent in certain cases, and, as the Minister of Finance says, it might be less than that. But in any event, I cannot see why the people of Canada generally should bear that loss. It is my opinion that this legislation would be of no benefit to any workman in the city of Brantford, and I doubt if it will be of any benefit to anyone in the city of Brantford. I think I can say generally that it will be of very little benefit to any working man in Eastern Canada, and yet these working men are called upon to pay that part of this loss.

Mr. DONNELLY: Are we here only to legislate for the city of Brantford?

Mr. MACDONALD: That is not a fair retort, because I am only directly familiar with the city of Brantford. But I added that I am confident that the legislation would be of no benefit to the working men of Eastern Canada.

Hon. Mr. DUNNING: I can definitely contradict that.

Mr. MACDONALD: That is as I see the act at the present time. There are very few working men in homes which are valued to-day at a higher rate than 80 per cent of the market value for mortgage purposes.

Hon. Mr. DUNNING: I wish that were true.

Mr. TUCKER: What is your authority for that?

Mr. MACDONALD: That is my opinion, judging by the city of Brantford. I know in the city of Brantford that there are few working men's homes on which mortgage companies have mortgages and on which that mortgage is more than 80 per cent of the value.

Mr. TUCKER: You know that yourself?

Mr. MACDONALD: That is my opinion of the companies in the city of Brantford, and I believe that is general in Eastern Canada. Now, if these mortgage companies are prepared to lose a certain amount of money they are prepared to lose one-half of the loans which they take by revaluing the properties. That is, they must be prepared to do that or else they cannot become a member of the bank.

Mr. TUCKER: Do you suggest that there is any loss to a company to revalue the mortgage down to the full 100 per cent of its face value? How in the world can they collect any more than 100 per cent of the face value?

Mr. MACDONALD: Many a man has a judgment against him for the amount he received on entering into a mortgage; and every mortgage, as Mr. Tucker knows being a lawyer, has a covenant under which the mortgagor promises to pay the face value of that mortgage. If he does not pay it he is sued on the covenant and a judgment is given against him on the covenant, and all his assets are liable for payment.

Mr. TUCKER: Yes, but that should hardly go on the record as a bald statement. You know as a lawyer that if you take foreclosure proceedings and take the property and use it the debt is cancelled. And you know that as well as I do.

Mr. MACDONALD: I know that is not correct. I know that in a foreclosure action, as my friend knows, you certainly get a judgment for the amount owing under the mortgage.

Mr. TUCKER: You know perfectly well that you cannot have both.

The CHAIRMAN: Order. Let Mr. Macdonald finish his statement, please.

Mr. MACDONALD: If the property is taken over by the mortgagee and sold and there is a deficiency that mortgagee can sue.

My point was that if the mortgage companies are prepared to take this loss why not change the amount from 80 per cent to 90 per cent.

Mr. KINLEY: 100 per cent.

Mr. MACDONALD: Just one minute. I say 90 per cent because some members of the committee have said that there must be some equity in the property left after it is revalued. I recall that remark being made several times. If the value of the mortgage were reduced to 90 per cent of its present value then there would be an equity for the owner, and clause Q could be struck out altogether. The companies would bear the loss and they could then get the benefit of this Act.

Hon. Mr. DUNNING: May I be permitted a question? Coming back to the working men of Brantford who have mortgages on their homes and who you say will not benefit, what rate of interest is the normal rate of interest on those mortgages on working men's homes in Brantford?

Mr. MACDONALD: The mortgages in Brantford on working men's homes are held almost entirely by individuals and not by companies, except companies which have taken advantage of the—

Hon. Mr. DUNNING: National Housing Act.

Mr. MACDONALD: —National Housing Act, which is not included in this Act. Therefore, I think it is a very—

Hon. Mr. DUNNING: But still they do pay interest even to individuals. What is the rate of interest?

Mr. MACDONALD: Well, the rate of interest to-day in Brantford, I suppose, would be around 6 per cent.

Hon. Mr. DUNNING: Thank you.

Mr. MACDONALD: And if this Act is going to reduce interest rates to private lenders on mortgages to 5 per cent it would be a benefit to the working men but, as I say, most mortgages in Brantford on working men's homes are held by private individuals and they will not be affected by this Act.

My suggestion would be that the words "80 per cent" be made "90 per cent" and that clause Q be struck out of the Act.

The CHAIRMAN: There is an amendment now by Mr. Hill. Do you move an amendment to the amendment?

Mr. MACDONALD: That is my suggestion.

Hon. Mr. DUNNING: I thought the gentlemen who favoured making 80 per cent 100 per cent had pretty fully stated their views, and I thought perhaps I might facilitate further discussion if I stated that I regard this provision as vital to the successful operation of this adjustment, viewing Canada as a whole. It is of no use talking to me about Brantford or Yorkton, or some other individual place, because one could quote many other places in which the conditions are such as to demand, nay, necessitate, an adjustment of this kind. Those are situations which represent a real problem to the mortgage companies at this moment because in the decline in values which have taken place there has been a drifting of the lower class properties into slum conditions.

This is an effort co-operatively as between the government and the mortgage companies who become members to rehabilitate that situation by creating an equity, and it is proposed that the state and the corporations should share in the creation of the equity in order to stop that downward drift. One needs only to go into many of our cities, into what might be called the poorer quarters, to see the manner in which the drift is going on.

I think this provision most important. In fact, I think it is most important in order to get the co-operation of the mortgage companies. I believe the mortgage companies themselves—they cannot speak as a body—those who are interested in the wide range of mortgage lending in Canada, will, I know, agree with me that they themselves cannot meet the situation. They know that it should be met, not merely in their own interests but in the interests of preventing a further steady slipping in the social conditions of the areas affected.

That is all I desire to say. The committee can vote. The chairman has ruled the motion is in order. That is his duty.

Mr. HILL: Would the minister give us an idea what this is going to cost the Dominion of Canada?

Hon. Mr. DUNNING: This provision?

Mr. HILL: No, the whole bill.

Hon. Mr. DUNNING: That, of course, Mr. Hill—

Mr. HILL: Mr. Chairman—

Hon. Mr. DUNNING: May I attempt to answer the question?

Mr. HILL: Yes.

Hon. Mr. DUNNING: By pointing out that it obviously depends upon the extent to which mortgage loaning companies become members. It depends also in some measure on the extent to which provinces are willing to recognize

these re-adjusted mortgages and to save them from the arbitrary effects of existing moratoria legislation. Those are two factors which must be worked out.

Mr. VIEN: But in answer to Mr. Hill's question, is not the government in possession of certain information which would indicate to the committee the amount of the pressing loans which have to be adjusted and which have prompted the government to present this legislation? It seems to me that the government, in presenting this legislation, must have had before it specific facts which prompted them to put on the statute book such an extraordinary piece of legislation. I must confess that in my opinion it is the most revolutionary piece of legislation, if we talk in terms of orthodox finance.

Hon. Mr. DUNNING: Yes; I am accused of being either a reactionary or a radical. I do not mind either.

Mr. VIEN: I do not believe that the minister will deny that this is a piece of very radical legislation.

Hon. Mr. DUNNING: I believed it so to be.

Mr. VIEN: In finance.

Hon. Mr. DUNNING: Yes.

Mr. VIEN: If it is a mistake to be orthodox in finance then there must be a tremendous number of reasons to prompt the government to present this legislation.

Hon. Mr. DUNNING: The greatest possible reason, yes.

Mr. VIEN: I have no doubt of that. Therefore, it seems a fair question, as put by Mr. Hill, how much does the government visualize that the country will have to face to meet the commitments involved in this bill?

Of course, we open the door pretty wide, and the minister is right when he states that it is impossible to say to what extent the loan companies will take advantage of the provisions of this bill. But there should be at least a statement approximating the amount of the commitment which we know shall be taken to meet the specific facts prompting the legislation. I do not know if I have made myself clear.

Hon. Mr. DUNNING: Yes.

Mr. VIEN: Whilst I am on this subject, the minister stated that this is not only to take care of certain loans in certain distant provinces of Canada, but it is also destined to relieve the difficulties encountered by loan companies in connection with the slums of our large cities where property values have vanished considerably.

But what about large estates, as, for example, in Montreal? I know some very large estates which have loaned hundreds of thousands of dollars on small mortgages, \$2,000, \$3,000, \$4,000 or \$5,000, on each piece of property in districts of the city of Montreal which are of the nature described by the Minister—slums—in the southeasterly portion of the city where the values have gone down. On what ground will I be able to face the electors of Outremont when I go back to Montreal? There are in Outremont, living a few doors from where I live, directors of estates and directors of companies that have loaned money along those lines for years. Some of these estates have had all their assets invested in that way for two or three generations and have seen these assets dwindle away as a result of the depreciation and as a result of their inability to collect the capital as well as the interest on these investments because of the Moratorium Act passed by the various provinces.

In the province of Quebec, Mr. Chairman, under a Moratorium Act, if a mortgagor has paid his interest, is not in arrears of his interest for more than the current year and is not in arrears for more than two years outside of the current year of municipal taxes, the mortgagee cannot institute any legal pro-

ceedings to recover the amount of the mortgage. Here are estates which are seriously embarrassed. How can I justify the government taking to the extent of \$200,000,000 of the public funds of Canada, to which these estates will be contributors, to relieve two, three or four loan or trust companies?

Hon. Mr. DUNNING: Mr. Vien, that is entirely wrong. No one expects for one moment that \$200,000,000 will be involved in the adjustments of this legislation.

Mr. VIEN: Is that not the maximum to be granted by the bank we are creating?

Hon. Mr. DUNNING: That is for the whole purpose of the Act. You are speaking entirely of the adjustment feature and assuming that \$200,000,000 will be expended in adjustments. That is entirely wrong, and I dealt with that yesterday.

Mr. VIEN: Well, \$200,000,000 will be at the disposal of the new bank for the purposes of the operation of the Act?

Hon. Mr. DUNNING: Yes.

Mr. VIEN: Part of which will be in the form of a contribution by the government to write off—

Hon. Mr. DUNNING: That is right.

Mr. VIEN:—the reduction that is to take place.

Hon. Mr. DUNNING: A small fraction of the total.

Mr. VIEN: Will it be \$5,000,000.

Hon. Mr. DUNNING: Oh, yes.

Mr. VIEN: Will it be \$10,000,000 or \$15,000,000?

Hon. Mr. DUNNING: Yes, I expect it to be more than that.

Mr. VIEN: Will it be \$40,000,000?

Hon. Mr. DUNNING: Oh, well—

Mr. VIEN: I say \$15,000,000 and the minister tells me it will be more than that. Let us say \$20,000,000 or \$25,000,000 to be within reasonable bounds in our surmise.

Hon. Mr. DUNNING: It depends on the valuations, of course, and the number of companies which come in.

Mr. HILL: From the information we have had it appears we might lose \$200,000,000.

Mr. TUCKER: Mr. Chairman, we have carried the debate on the principle of this bill in the house and we have—

Mr. VIEN: Mr. Chairman, is there a point of order?

Mr. TUCKER: We are getting close to the end of this session and I for one object to this thing being debated over and over again as to whether this bill is desirable or not.

We are discussing at the present time, Mr. Chairman, section 16, whether 80 per cent shall be replaced by 100 per cent. Mr. Vien's remarks are directed to the question of whether we are justified in voting \$200,000,000 for the purpose of this bill. That has already been decided by the House of Commons and, so far as I am concerned, I think the argument of Mr. Vien is out of order. If we were at the beginning of the session with two or three months at our disposal in which to discuss matters that have already been decided I would not raise this point of order. But I do suggest that this discussion and the arguments that are being advanced are directed to prove that the House of Commons when it carried the second reading and approved the principle of applying \$200,000,000 for the purpose of this Act was wrong. I submit that argument is out of order in this committee at this time.

The CHAIRMAN: Proceed, Mr. Vien.

Mr. VIEN: It is amusing, Mr. Chairman, to listen to Mr. Tucker raising a point of order of this kind because both in the house and in this committee he has used to a considerable extent the privileges of a member of this committee, and I recall the instances when the honourable the minister himself was asking the chairman to curb his loquacity.

Mr. TUCKER: I object to that. It is absolutely incorrect. I demand an immediate withdrawal.

The CHAIRMAN: Order.

Mr. TUCKER: I ask that the member withdraw, because that is not so. I ask, Mr. Chairman, that you request the member to withdraw. That is not so.

Mr. VIEN: I cannot withdraw a statement of fact.

Mr. TUCKER: The statement is not correct.

The CHAIRMAN: Order. Proceed, Mr. Vien.

Mr. VIEN: I was simply pointing out my difficulty in a city like Montreal. Some of the members have spoken of their electors; I could speak of mine, I suppose, having in mind men in my riding who have loaned large sums of money on mortgages in the administration of estates; then I, as a member of the House of Commons, am supporting a piece of legislation which comes to the assistance of two or three loan companies—

Hon. Mr. DUNNING: No, no; that is not correct.

Mr. VIEN: Well, then, what is the purpose?

Hon. Mr. DUNNING: Two or three is absurd.

Mr. TUCKER: Do you want to sit here till July?

Mr. VIEN: I am not telling a lie.

Mr. TUCKER: I did not say "a lie."

Mr. DONNELLY: He said "till July."

Mr. VIEN: The companies in their category are enumerated in section 16. We come to the assistance of a class of people loaning money. There are other classes of people who are in the same condition, labouring under the same conditions, and they are to fare for themselves and to work out their own salvation. I would like to have some reasonable explanation to give to these people for what I consider an unfair and unjust discrimination between two classes of money lenders, one being helped and the other being left alone. My difficulty is considerable in that way. I feel if we enter into that sphere of coming to the assistance of certain companies, I do not know how we can close the door consistently to applications by other people who are in exactly the same position. That is my difficulty. I would like to find a reasonable explanation to give to my electors, and I believe speaking, I think, the mind of quite a few members from the province of Quebec that a number of them will find themselves in the same position.

Hon. Mr. STEVENS: Mr. Chairman, I somewhat agree with Mr. Tucker that we are getting a long way from the clause before us.

Mr. TUCKER: Hear, hear.

Hon. Mr. STEVENS: The discussion by Mr. Vien raises the whole question of whether the legislation is good or bad. I do not wish to discuss that, but the subject of the clause is whether it should be 80 per cent of the valuation or 100 per cent which will be applied to these new mortgages. Again I postulate my observation on the assumption that the principle is approved by the committee and by the house, and on that assumption I feel that the 80 per cent valuation is essential to the carrying out of the idea of the legislation, without debating for a moment whether the legislation is good or bad. And

the reason, of course, is the one cited by the minister, that it is desirable to have an equity over and above the amount of the mortgage of a property, and for that reason I am favouring 80 per cent, and I particularly, of course, do that because of the situation that is also more or less settled, that a company must bring both its farm and its urban mortgages into the picture. Personally, I will digress only to a very slight degree to say that had we seen fit in the proceeding subsections to have separated the two, then there is an argument that might be advanced and might change my views, but having settled those points I, personally, think we should have the 80 per cent.

Mr. COLDWELL: Mr. Chairman, like Mr. Stevens I have some criticism of the bill, but we have adopted the principle, and I believe that we should consider whether or not it is wise for the person who holds the property to have an equity in it or not. Now, the proposal before us is to wipe out the mortgagor's equity practically in the property. It gives him some relief, it is true. My own opinion was and is that the reduction should have been on the basis of the proportional interest in the property at the time the mortgage was made, and, perhaps, I might have some criticism of compensating the companies for a bad appraisal originally which, in many cases, I think, was the case. Nevertheless, we have adopted the principle, and it seems to me that we must, of necessity, preserve some equity in the property for the mortgagor, and I think we should discuss this matter on that basis.

There are many other things that one could bring into a discussion of this sort, but having adopted the principle I think we should stick to the main proposal before us.

Mr. JAKES: Mr. Chairman, the views of the group I represent are that we should support this bill as it is for want of, perhaps, something better or something more drastic. We believe it is a move in the right direction. Now, much has been said of the east, and, personally, I know nothing of the east; but I do know something about the west, and I take it the Minister of Finance, of course, looks at the question from the national standpoint.

Hon. Mr. DUNNING: I try to.

Mr. JAKES: Yes. I take it that he sees in the condition which exists to-day nothing short of a national menace that the condition of many debtors is hopeless, and that it is not in the national interest that those people shall be deprived not only of their possessions but of their means of a livelihood. As the present Prime Minister has said, usury once in control will wreck any nation. Therefore, we oppose this amendment, and are prepared to support the bill as it is.

Mr. HILL: Mr. Chairman, in moving the amendment to increase the percentage to 100 per cent, I did so in the hope of saving the government some small amount of money in what appears will be a tremendous loss. I thought at the same time it would be fair to the property owner to have his property written down to 100 per cent. Now, for the benefit of the committee, I think they should have this information before them. Yesterday we heard of the report on rural relief, and if you will turn to page 60 of that report you will find where the Saskatchewan government reports its adjusted debt adjustments in the province of \$112 million, and it would appear from the details given that the loss was \$60 million. This may give you some idea of the tremendous loss the government may have to take. The report gives some typical adjustments made by the Saskatchewan board on farm loans, and I will read some of them:—

Before adjustment	After adjustment
\$21,514	\$ 7,714
15,004	5,212
16,125	7,800
13,937	6,936
8,508	2,202
12,209	6,426
26,293	11,290
26,244	11,086
7,770	3,869

The total is \$148,000 adjusted down to \$62,000 which is 45 per cent.

Hon. Mr. DUNNING: That is already done. We cannot lose anything on this legislation.

Mr. HILL: No, but if we are going to deal with another four or five hundred million dollars indebtedness we can easily lose \$300 million.

Hon. Mr. DUNNING: The total assets of the companies represented here were given on the first day of this committee's proceedings at \$580 million—total mortgage assets.

Mr. HILL: Yes, that was the amount.

Hon. Mr. DUNNING: Can anybody conceive in the face of that, that it would require \$200 million to make the adjustments contemplated by this legislation?

Mr. HILL: It would easily require 50 million or maybe \$100 million.

Hon. Mr. DUNNING: I do not agree.

Mr. HILL: Suppose they wrote down \$300,000,000, there is going to be \$160,000,000 loss.

Mr. TUCKER: You will write off 50 per cent of their assets.

Mr. DONNELLY: The most of that adjustment has been for food to keep the people alive. That has nothing to do with mortgages.

Mr. HILL: It deals with farm mortgages.

The CHAIRMAN: It is impossible to follow your conversation.

Hon. Mr. STEVENS: I was saying that the percentage of the \$580,000,000 was \$380,000,000 or somewhere thereabouts for urban homes which are in good standing.

Mr. HILL: Will you say the loss would not be \$50,000,000 on this?

Hon. Mr. STEVENS: I would not say that.

Mr. HILL: No, and no other man would.

Mr. KINLEY: Mr. Chairman, as I look at this legislation it has three principal features. First, there is the feature of adjustments with a cancellation of interest, which to a degree has merit; secondly, there is the reduction of interest, wages of money. I am all for that; thirdly, it provides cheaper money. The country provides credit to companies for the purpose of carrying on mortgage business, and I think that also is desirable.

Now, also, with regard to the adjustment features. Coming from the province of Nova Scotia, I do not think it would be very much good to the maritimes. Whether Mr. Dunning is a radical or a reactionary, I do think so far as I know him that he represents views of the sound people of this country, and he is so regarded in the maritime provinces. However, on this occasion I must put before the committee my impression with regard to this 80 per cent clause. The property will be appraised. Just how it will be appraised, we do not know. If it is appraised according to its assessed valuation in my province it would be auction value; that is what you could get for it on a forced sale. It is all very well to say that people are in difficulties and we think

that the mortgage business should be put on its feet. I think it is all very well for the country to bear the expense of balancing the books. That is to say, that if a man has a farm or if he has an apartment house—mind you this now goes to the extent of \$14,000 as a maximum—and we say to the trust companies, if you want to adjust this matter in the interest of the debtor and in the interest of the mortgage company, we will go so far as to say that we will relieve you of the excess burden of debt; we will reduce it to 100 per cent of the value of the property that you own. Suppose you had a property and made a settlement. It had a low valuation and you settled with the 20 per cent equity in the property; you could immediately go out and sell it and could make money out of this legislation. That is just exactly what will be done by the hangers-on around the brokerage offices, those who are selling in a financial way. They will get a list of such mortgages and they will be trading on this 20 per cent. You will find in this country there will be a great deal of injustice done by this trading. Then, there is another feature.

The need should be justification. It is for the needy, but suppose I am a man with resources; I have a mortgage on my property. If the mortgage is in any way a hazard, the mortgage company will say, now you give me a guarantee bond, sign a guarantee bond for the mortgage. I sign the guarantee bond. That means that I pledge my resources for the contract when it comes due. By this legislation you relieve me of that mortgage bond and also are not concerned about whether I can pay, and that is a serious feature of it, because it is going to be used by a great many selfish people in this country for the purpose of making profit.

Hon. Mr. DUNNING: Do you mean some form of collateral to the mortgage when you speak of a mortgage bond?

Mr. KINLEY: I mean to say this. If I have a mortgage on my house—

The CHAIRMAN: Covenant.

Mr. KINLEY: —the company in Nova Scotia will say to me, if they think the mortgage is not properly covered by what value is there, you sign a guarantee bond. Then I sign it, and become permanently liable for the debt.

Hon. Mr. DUNNING: What is the difference between that and the personal covenant in the mortgage which exists in most provinces?

Hon. Mr. CAHAN: It is a legal entity. It may be sued on separately at any time under any condition.

Hon. Mr. DUNNING: I see.

Hon. Mr. CAHAN: It is an absolute guarantee of the individual, and his personal liability. He cannot escape it by foreclosure.

Hon. Mr. DUNNING: Not joined to the mortgage. Separate action could be taken.

Mr. KINLEY: Separate and apart. I am all for helping the man who needs help in this country; suppose a man comes to me and he says, Mr. Kinley, I am in debt. I say to him, how much do you owe? He may say, for instance, \$5,000, and I say, well I will pay the \$5,000 for you and you will be out of debt. He will say, I want a gift of another thousand before I will be satisfied and able to do something. It seems to me that you are asking the taxpayers of Canada to bonus the people who have not lived up to their obligations in this country. I am not criticising the adjustment but the bonus. You have many people or many cases where people could not live up to their obligations; but I do say this, that the government should be very careful not to do anything that will encourage people not to live up to their obligations. When you come down to Nova Scotia I do not believe there are many mortgages that represent more than 60 per cent of the value of the property—that is the mortgages that come under this class of legislation.

Hon. Mr. DUNNING: You do not believe there are many that exceed 60 per cent?

Mr. KINLEY: I do not believe that there are many that exceed 60 per cent.

Hon. Mr. DUNNING: Then, you have no problem.

Mr. KINLEY: But the taxpayers of Nova Scotia must pay the shot for the other people who have not lived up to their obligations, and you are going to punish my people for their virtue. I do not want my people to be punished for their virtue.

Mr. COLDWELL: For their good fortune.

Mr. KINLEY: No, for their virtue. There is such a thing as prodigality, and prodigality always brings ruin.

Mr. TUCKER: Surely, you do not condemn the whole people?

Mr. KINLEY: No, I do not condemn the whole people, but Mr. Jaques says usury in a country once in control brings ruin. I want to tell you—

Mr. JAKES: I did not say that; the Prime Minister said it.

Mr. KINLEY: I do not care who said it; usury in control is a bad thing. I was not criticising but commending the statement but I wanted to add this: I fear for this thing we call democracy. Democracy means self-government. How long can people who cannot pay their bills and who cannot maintain themselves govern themselves? They won't do it; the history of the world has not been that way. The history of the world has been that people will govern or be governed.

Mr. TUCKER: I think this is out of order, anyway.

Mr. KINLEY: No, it is in order. That depends on their virtue, and we must maintain the standard; we must maintain the standard if we want to preserve democracy. If the people lean on the government too heavily and if they want a financial shepherd instead of a government, they will be reduced to a condition that we find them in many countries; and democracy will fail. It is not a soft thing; it is a hard thing, and it means effort and responsibility.

Hon. Mr. DUNNING: I must raise a point of order. You have raised a discussion here on democracy and government that will go on for hours.

Hon. Mr. STEVENS: Is it 80 per cent or 100 per cent.

Mr. KINLEY: You cannot bleed a turnip; you cannot take from a man that which he has not got. So if under this adjustment proposition we say to a man, we will reduce your mortgage to 100 per cent of the appraised value of your property; that is, your property will be represented or will represent the amount of the mortgage, then I think we are going a long way, because I am told there are properties in Canada that will be valued for appraisal at \$2,500 when there is a mortgage for \$8,000 or \$10,000.

Mr. WARD: Why should they not have that adjusted?

Mr. KINLEY: They should but not bonused. The reason is there is no other way to do it; and adjustment is sensible, but what I object to is the extra bonus that we are going to give to these people. You are going to allow the trust company and the man with the mortgage to make a profit, but the rest of the country must pay the debt and pay it in taxes. I think I represent the views of the people of my part of the country. After all, economy is an element in the public life of the country. I think it was Dickens who said, if you spend a little less than you earn you have happiness; if you spend more you have sorrow and trouble.

Hon. Mr. DUNNING: I have a picture of Micawber in my room just to exercise a beneficial inspiration on me.

Mr. VIEN: It did not succeed at this time.

Mr. KINLEY: I must say, Mr. Chairman, that what the minister said a few minutes ago makes me think, because of the high regard I have for his soundness in financial affairs—at the same time the 80 per cent is questionable.

Mr. JAKES: Orthodox.

Mr. KINLEY: No, radical; I am regarded as a radical in my part of the country.

Mr. DONNELLY: Whoa there, back up.

Mr. KINLEY: Mark you, this bill has many other features. I think the bill commends itself; it is splendid legislation but I think that this 20 per cent feature—

Mr. WARD: Don't destroy it.

Mr. KINLEY: This 20 per cent is something that goes beyond what is fair and right in the interests of the whole people of the country.

Hon. Mr. STEVENS: Question?

The CHAIRMAN: It was moved by Mr. Hill—

Mr. MACDONALD: Before the question is put may I say this: yesterday I said there was some argument going on at the time—that this legislation to be effective must leave some equity in the property. I do still feel that the obligation should be 90 per cent and that the government should not take a loss. I do think a small committee of probably 24 or 25 members should not decide this very important question. The minister has said he feels it is vital to the bill, and if it is, I do not think we should take it upon ourselves to decide the fate of this bill. The suggestion I gave of 90 per cent did not seem to meet with much approval at the moment. I am leaving that with the minister with the hope that something might be worked out along that line so that the people of Canada will not be required to take a greater loss than they would otherwise do. I am, therefore, going to vote against the amendment, in favour of the clause at the present time, reserving, however, the right to give the matter more consideration and to vote as I see fit when the matter is referred to the committee of the whole house.

In view of the fact we have only 24 or 25 members here, and in view of the minister's statement that he considers the clause vital to the bill, I would suggest that the amendment be withdrawn, but that all of us reserve our right to vote as we see fit when the matter comes up in the house.

The CHAIRMAN: Mr. Hill, do you desire to withdraw the amendment?

Mr. HILL: No.

The CHAIRMAN: It is moved by Mr. Hill that clause (d) of sub-clause (ii) of section 16 be amended so that the words "eighty per cent" shall be changed to read "one hundred per cent."

Mr. VIEN: Did I understand the minister to say that if such an amendment to the bill was carried, the bill would be not workable? Did I understand that?

Hon. Mr. DUNNING: In my opinion, with such an amendment the legislation would be stillborn.

Mr. KINLEY: Would the minister go a little farther and give us some cogent reason why he is of that opinion?

Mr. VIEN: The view that I have from the discussion—I may be all wrong and the minister might perhaps clarify our views—is that if the company took a 50 per cent loss of the adjustment, without the government paying the balance, by bringing it up to 90 per cent as suggested by Mr. Macdonald, or 100 per cent as suggested by Mr. Hill, the bill would still be very efficient. If that were done would not the bill still be very efficient to that extent?

Hon. Mr. DUNNING: Mr. Chairman, I do not desire to take the time of the committee for a lengthy statement. I do not care much whether I am

regarded as orthodox, reactionary, or radical. I am trying to deal with things as they are across this country and in this connection I have been convinced for some time that we have here a grave problem of national proportions; it does not strike equally over the country. It is another of the matters which illustrate what a difficult country this is to govern. The problem has been met in other countries by various methods, none of which specifically commend themselves to me, treated as a whole. But viewing the results secured—I do not want to make invidious comparisons in that regard—it is quite apparent to anyone who studies the situation from coast to coast, not only with reference to the prairies, that we must try to rationalize our mortgage business.

Now, in facing that problem of rationalization, not this year or last year—the subject, I may say, has been a hobby with me for more than twenty-five years—I was a member of a Royal Commission which attempted to deal with the condition twenty-five years ago, resulting from conditions in a limited area similar to that which we now face on a more national scale. It is not a hurried matter with me at all. Seeking to, as I put it, rationalize the whole business, we are faced with the fact that we are a country governed by a federal system; that our powers here with respect to property and civil rights are nil; we have none. Anything we do in connection with these particular questions which have arisen in the last number of years, we have had to do by setting up machinery for voluntary co-operation of the interested parties. I need not cite the incidents, they are legion. May I suggest to Mr. Vien that the fact the need for, shall I say, persuasion of the provinces, persuasion of those who are not governed in their relationship to their debtors by our legislation except in so far as our legislation is bankruptcy in character. I have naturally tried in working it out to work it out at the least cost to the federal treasury. To attempt to make a guess as to what would be involved in the cost to the federal treasury of the adjustment feature is a crazy thing for me to do, I know. But I will make one stab at it, if you like. If all of the companies came in and all applied it across Canada, my opinion is that the cost to the treasury of the adjustment features of the bill, considered singly, spread over twenty years, as we have devised it in the bill through the debentures of the mortgage bank, if given for 50 per cent which the government would carry through the bank, would not in my judgment exceed a figure of between \$40,000,000 and \$45,000,000 at the very outside. Now, of course, do not please regard that as a definite estimate. Obviously the valuations, the appraisals which we will come to shortly, and which constitute a very important feature of the bill, have a bearing upon that. I said in the House of Commons this is very dear to me, the means of dealing nationally with the mortgage situation by the aid of national credit. I believe we are starting something in this legislation which will go forward and will tend throughout the years to iron out the difficulties which have caused very great trouble in the past.

I might say that I visualize, Mr. Vien, a possible re-creation of the old building society under and by virtue of the features created by this bill. We see as we pass along possibilities in that regard. I visualize too the creation of types of co-operative mortgage institutions working under the provisions of the refinancing sections of this bill. That is, if there is popular need of them. Obviously, if those who are now in the business meet the need—

MR. VIEN: Is the machinery provided here?

HON. MR. DUNNING: It is possible, yes. By and large I am quite sure in my own mind, without being able to advance figures, that you will not get the mortgage situation of this country on a reasonable basis, a rational basis, in the future unless you provide in the interests of the mortgagee as well as the mortgagor that there will be an equity in the property after adjustment. I realize the force of what Mr. Kinley says. One can imagine, I suppose, a man getting an adjusted mortgage and then going out and selling the property and

putting the 20 per cent in his pocket. I suggest that would, in the nature of things, be a very rare possibility, a very rare possibility. But be that as it may, I do not claim perfection in this legislation; but I do claim that it represents the best that we can put forward under conditions as they are and under the situation of this country.

The CHAIRMAN: Shall the amendment carry?

Hon. Mr. CAHAN: Mr. Chairman, I shall vote for the amendment, but I vote for it simply as a partial relief from what I believe to be the mischievous features of this legislation. I think it is the most pernicious legislation ever introduced to parliament in so far as it appropriates public moneys from the federal treasury for the relief of those mortgagors who are able to pay their debts, and that is the very large proportion of the mortgagors interested outside possibly the three provinces of the middle west, the three farm provinces. There I cannot say, I have to accept statements made by men who say they know. It certainly means, and I believe in Ontario from the statistics so far as I have been able to study them, it means that a large number of farmers and home owners in the city will be relieved of their just and honest liabilities which they assumed with open eyes, by appropriation from the federal treasury, while they, by the use of the property and of other assets are still able to meet their liabilities.

The minister says this is dealing with certain liabilities by national credit and by assumption by the government of certain liabilities. You cannot stop here if this bill passes into an act. You have all classes and conditions of creditors in this country who regard themselves as equally entitled to readjustment of their liabilities, and that readjustment cannot be denied if this bill is put into force.

The CHAIRMAN: Those in favour of the amendment please say "aye".

I declare the amendment lost.

Shall clause (d) of subsection (ii) of section 16 be carried?

Mr. HILL: Record the vote.

The CHAIRMAN: It is not necessary to have it recorded, Mr. Hill.

Hon. Mr. DUNNING: If they wish a recorded vote, there is a way of getting it.

The CHAIRMAN: Shall clause (d) carry?

Carried.

On section (e).

Carried.

Hon. Mr. CAHAN: On division.

The CHAIRMAN: On section (f).

Mr. HILL: On section (f), I should like to ask the minister if there is any reason, since we are voting through such radical legislation—

Mr. TUCKER: Liberal legislation.

Mr. HILL: —any reason why the rate of interest on mortgages generally should not be established by this bill? I would not say 5 per cent, but in cases where they are using their own money, a maximum rate of interest, but setting the spread between the rate of interest on government bonds and the maximum rate should remain constant, the same as you are doing with the money which you are loaning. If you will do that you will lend some relief at least to the people east of the Great Lakes without which I do not think there will be much relief given. If you did that, that would be a move in the right direction.

Hon. Mr. DUNNING: Would you mind repeating that suggestion; I did not get it.

Mr. HILL: I would suggest that the maximum rate of interest on mortgages, where the money is supplied from other sources than the government, be estab-

lished; that the rate should be established the same as this rate of 5 per cent by a spread between the interest on government bonds and the maximum rate. You have put here 2 per cent for money loaned by the government.

Hon. Mr. DUNNING: That is in a later clause; this deals only with the adjusted mortgages.

Mr. HILL: You have established a 5 per cent rate; why could you not establish a 3 per cent rate instead of 2 on money used outside? That would give some relief to people who are now paying 7, 8 and 9 per cent on mortgages, because their credit was not so good. In many cases people have been unable to pay their interest for a period of perhaps two years, and the mortgagee has threatened either to foreclose or renew the mortgage at a higher rate of interest. That has been done, I believe, in a number of cases.

Mr. THORSON: Would your idea be that we should leave the rate at 5 per cent on the adjusted mortgage?

Mr. HILL: Yes.

Mr. THORSON: And then in respect to all other mortgages fix a maximum rate of say 1 per cent higher than the rate which is fixed by these adjusted mortgages?

Mr. HILL: That would be the point.

The CHAIRMAN: The minister has an amendment.

Mr. TUCKER: I should like to see a section put into the bill providing for that.

Hon. Mr. DUNNING: There is a change in the language of (f). The amendment is:—

That sub-paragraph (i) of paragraph (f) of section 16 of the bill be struck out and the following substituted therefor:—

(f) (i) Each mortgage on a farm in Canada shall be adjusted to provide that the rate of interest shall not exceed an effective rate of five per centum per annum;—

I do not know the reason for this.

Hon. Mr. CAHAN: Will you give it to us again slowly?

Hon. Mr. DUNNING: Yes. (Reads)

Mr. KINLEY: Why the word "effective"?

Hon. Mr. DUNNING: I will ask Mr. Johnson to explain the reason for the change in the wording.

Mr. JOHNSON: The subsection now reads:—

(i) The rate of interest on all adjusted mortgages on farms in Canada shall not exceed an effective rate of five per centum per annum.

The question was raised that there might be mortgages where it would not be necessary to write off any principal or any arrears of interest, so in that sense it would not be an adjusted mortgage; but nevertheless we want to provide for all mortgages on farms in Canada held by a member company, the rate shall not exceed five per centum per annum.

Mr. KINLEY: You say an effective rate. What do you mean? What do you want the word "effective" for?

Mr. JOHNSON: As I understand it, you have a rate of 5 per cent per annum which would be \$5 a year paid at the end of the year; if you pay monthly or quarterly there must be an adjustment.

Mr. KINLEY: While we are dealing with adjustments which appear in this amendment, there is one feature that I think is very serious, and that is with regard to the other assets and other property of a person who has a mortgage. In connection with old age pension in all the provinces a man or woman has to

put in a statement showing what he is worth or is earning. In order to qualify he must show that his property is not in excess of what the Act says. I think there should be some such provision in this Act, although the minister said it would be a difficult thing to do. I cannot see that. Have a man declare that his other resources are not sufficient to look after his obligations when he is adjusting a mortgage. To my mind it is an important and serious matter having an influence on the whole structure of our social and financial system.

Mr. COLDWELL: Having gone this distance, why not go all the way, and instead of adjusting just the class of farms and homes which come under this Act and under these companies in this way, why not make an effective rate of interest for all farms in Canada at 5 per cent? If you are going simply to place the people who are dealing with the companies which come under this Act in that position, it seems to me that those who do not come under the Act should be entitled to consideration, and particularly those who are dealing with private individuals. That, as I understand it, affects largely the people in eastern Canada. Now, it seems to me that if we are going to amend the clause we should consider the whole matter. Personally, I think it should be done. I think that is the weakness of this whole measure—that we only deal with a part of the mortgages and a part of the people, and we should have an effective rate for all.

Hon. Mr. STEVENS: Mr. Coldwell your difficulty is that this bill—

Mr. KINLEY: Mr. Chairman, I asked what I thought was a pertinent question, and Mr. Coldwell interjected, and I do think my question was important enough to merit an answer.

Hon. Mr. DUNNING: I did not answer immediately, Mr. Kinley, because that very matter was so fully debated yesterday; you are reviving again yesterday's debate. It is on the record of yesterday—a very full discussion.

Mr. KINLEY: The only answer I have heard was that it was too difficult and expensive to do.

Hon. Mr. DUNNING: I believe that it would cost more to do it than it would be worth to anybody.

Hon. Mr. CAHAN: I submit it would cost nothing if each applicant was compelled to make a declaration that he was not able to pay.

Mr. DONNELLY: I agree with Mr. Coldwell's point. I would like to see the rate of interest on all mortgages brought down to 5 per cent; but whether we did it or not, if we did bring down this rate of interest to 5 per cent as we do in certain cases, would it not have a tendency to bring all other mortgages down to somewhere in the neighbourhood of 5 per cent, and also to lower interest rates to people needing it throughout the country, when we have cut down our mortgages.

Hon. Mr. DUNNING: If we arbitrarily reduced all interest rates to 5 per cent we thereby say that people in some sections of this country cannot borrow money at all.

Mr. MACDONALD: I agree with the Minister of Finance. If we endeavour to set an interest rate, say, at 5 per cent which is a maximum rate and which anybody can charge for money—

Hon. Mr. DUNNING: Anywhere in Canada.

Mr. MACDONALD: Anywhere in Canada—I say the great mass of farmers in Canada won't be able to borrow a 5-cent piece.

Hon. Mr. STEVENS: You cannot do it under this.

Hon. Mr. DUNNING: No.

Mr. MACDONALD: You cannot do it. If you want to injure the farmers of Canada fix this rate.

The CHAIRMAN: Shall the paragraph of the bill as amended carry?
(Carried.)

Hon. Mr. CAHAN: Before we carry that, I am not satisfied with the term "effective rate." I do not know that the interpretation made by counsel—

Mr. THORSON: It can be amended under section 31.

Hon. Mr. CAHAN: Oh, yes, the whole bill can be defined.

The CHAIRMAN: Subsection 2, shall it carry?

Hon. Mr. DUNNING: I have no amendment to subsection 2.

Mr. COLDWELL: What is the definition of the word "farm"?

Hon. Mr. STEVENS: It is defined in 31, or it is to be defined.

Hon. Mr. DUNNING: We have a lot of work to do on that definition.

The CHAIRMAN: Shall subsection 2 carry?

(Carried.)

Shall subsection 3 carry?

(Carried.)

We come now to G-1.

Hon. Mr. DUNNING: Now, on G-1 I know there will be quite a little discussion, and I am quite prepared to listen to it. A number of members have spoken to me about this subsection, but I do hope the discussion will be confined to this point.

Mr. THORSON: Mr. Chairman, I am sure we all listened very attentively to Mr. Leonard when he spoke on behalf of the fifty-one companies who are associated in the organization which he represented, and I take it from his statement that his organization generally was sympathetic towards the relief on farm mortgages that is contemplated by this bill. Their attitude on the subject of home mortgages—that is urban mortgages—was somewhat different. Mr. Leonard expressed the view, as I understand it, that in the case of city mortgages there would be heavy losses that the companies would have to take in the reduced revenues that would result from the decreased rate of interest, and it was suggested there should be a differentiation between various classes of urban mortgages. When he was asked what differentiation he would suggest, he indicated that you might exempt from the operation of the bill altogether current mortgages and that you would apply the bill only to non-current mortgages. It seems to me that such a differentiation would be an extremely difficult differentiation to carry into effect and would create the feeling on the part of the debtors that there was discrimination as between different classes of debtors. Then, when they were discussing the exemptions yesterday, Mr. Leonard indicated that although it was desirable to have cut-off dates and certain mortgages exempted from the provisions of the bill, that that did not meet the difficulties of the situation. Obviously, the success of this bill is going to depend on whether companies execute membership agreements. That will be the test as to whether the bill will work or whether it will not. If no substantial company comes into the scheme—if no company enters into a membership agreement, the bill is an abortive bill.

Hon. Mr. CAHAN: It is a condition precedent.

Mr. THORSON: It is a condition precedent to the bill having any operative effect at all that at least one large company will come into the scheme. If only one large company comes into the scheme the operative effect of the bill may be comparatively small, and it is highly desirable, I think, that we should get as many companies coming into the scheme as possible so that the benefits of the Act shall be spread as widely as possible. It does seem to me desirable that there should be some differentiation, therefore, between farm mortgages and city mortgages in the light of what Mr. Leonard has said, and in the light

of whether any of the companies could afford to incur the great loss of revenue that will be an annual affair. They will take their adjustments and they will take their share of that loss, and if they have incurred an annual revenue loss greater than they can stand well it will simply mean that no companies will come under the Act. Now, it might be highly desirable to have a flat 5 per cent rate all over Canada applicable to farm mortgages and city mortgages. That would be highly desirable, and with the objective we are all seeking to attain—at any rate those of us who are in favour of the principle of the bill—the question I would like to ask Mr. Leonard to answer in a moment is: Would a differentiation in the rate of interest—a small differentiation in the rate of interest between farm mortgages and city mortgages bring a substantial number of companies into the scheme? Now, I do not know whether Mr. Leonard can speak for his member companies on this point or not, but I would like to hear what he has to say on that subject if it is not putting too great a task before him. That is to say, farm mortgages at 5 per cent as we passed section 5; then city mortgages, maximum rate, say, of 5½ per cent with the idea of making this legislation effective by bringing companies in: because if no companies come in this will be an abortive measure.

T. D'ARCY LEONARD, recalled.

THE WITNESS: Mr. Chairman, Mr. Minister and members of the committee, the question that Mr. Thorson raised is, of course, a most important one, and I am not in a position at the moment to give a very definite answer, certainly not an answer to everything. I could only give a rather definite impression or opinion, and I would like, if I may, to think aloud on the point that has been raised in the light of the submission I originally made to the committee. Possibly, in the light of what I might say the committee may feel that I might have an opportunity of conferring with the members of the companies that are with me and, perhaps, be able to make a more definite statement after the adjournment of the committee at noon. There have been some remarks which I think might create a rather wrong impression as to the attitude of the companies with respect to this bill. I think, probably, the record is clear, but I might simply say that this bill as we view it is one which is being put forward by the government and is being considered by parliament on a basis of a need existing in so far as debtors are concerned. If it is not clear that in as far as the association I represent is affected that there is no suggestion from our standpoint that there is a need from the standpoint of life insurance, loan or trust companies for this measure, I would like to make it clear that such is our view—that there is no such need—and this legislation must be considered, as I take it, from the standpoint the government has put forward, that there is a situation with respect to debts which the government believes should be dealt with from the standpoint of the debtor, and that in doing so there is put upon the companies a position which the government is prepared to assist in, so far as the companies cannot do so themselves. The plan, therefore, is a voluntary entering into a membership agreement upon the basis suggested by the government.

Now, you in parliament having decided that there is that situation which calls for this action—and that is the principle that you adopt—it then comes to us on a pure question of whether or not we are in a position to comply with the plan as outlined by the government; because, if not, then as Mr. Thorson says, it would be abortive; and in examining that he definitely came to the conclusion that the government plans in connection with the farm mortgage situation were based on a situation that we agreed did exist, that there could be no reasonable controversy when examined from a national standpoint that there was a condition as to an industry of a general nature that merited some general action in which we could play a part.

[Mr. T. D'Arcy Leonard, K.C.]

But we did not see that that general situation applied in connection with urban mortgages—certainly not in the same way as in connection with farm mortgages—and in examining, therefore, into the urban mortgage situation we were faced with two very definite facts: one was that there was a much smaller proportion of cases that might be termed needy cases where a problem might exist calling for national action, and at the same time by reason of the fact there was a very much larger proportion of cases of debtors able to pay which under a general plan would mean to that extent they were receiving a benefit, and at the expense of the companies, in so far as it was reflected in those cases in the interest rate, and thereby the resources of the companies would be depleted and they would be unable to come in under the plan particularly in so far as there was a real need.

The two points, then, upon which the bill was almost insurmountable in its difficulties and the complications with respect to urban mortgages, were, first of all, the mechanics in the number of cases involved if all non-farm city homes—if the mortgages on all non-farm homes had to be adjusted in accordance with the bill, and secondly, the reduction in the annual revenue by reason of the rate of interest on all those mortgages. Those two things made the bill, as I say, present what appeared to us to be insurmountable difficulties, and in an endeavour to overcome that and try to visualize what problem did exist the suggestion was made that the problem might relate to non-current mortgages.

Now, Mr. Thorson raises the point whether or not the $5\frac{1}{2}$ per cent, or an increase of a rate of interest to $5\frac{1}{2}$ per cent in the case of the cities would overcome those difficulties, and in examining it it appears immediately on the face of it that it certainly would greatly improve the probability in so far as the effect on the companies revenues are concerned, and naturally one would assume that that might make a very appreciable difference in the volume of business that might come in through membership. It seems to me, however, to leave still the second question as to the volume, as to the mechanics of dealing with all the city accounts throughout the country, and as I have been just thinking this over it occurs to me that there might be some way, perhaps, of meeting that, having in mind that if a rate were fixed for $5\frac{1}{2}$ per cent it would mean that certain other features of the bill might have to be either clarified or modified. I do not think, for example, that it would be in the interests of the debtors, having in mind the trend of interest rates, to set a long term for a $5\frac{1}{2}$ per cent interest rate, and it might also be that it was not desirable to adjust the terms of payment in many cases, and that for example, it could be left to the option of the debtor as to whether he would just take the $5\frac{1}{2}$ per cent rate with no other alteration of his contract or whether he could elect to say, "I prefer to have my contract adjusted in so far as principle payments and terms are concerned," I think in a great many cases the farmer or the debtor would be quite satisfied to leave the other terms of his contract the same.

By Hon. Mr. Cahan:

Q. Are you dealing with the farm loans or the city?—A. That was my mistake. I should have been dealing only with the debtor in the city. That would be the only adjustment really that he would require or desire, and the mechanics could be confined to the simple statement of a letter to him advising him that pursuant to the terms of the bill his rate of interest was $5\frac{1}{2}$ per cent.

By Mr. Thorson:

Q. May I interrupt there? Your suggestion is that it should be made voluntary to the debtor as to whether he would come in with the reduced rate of interest, and his contract otherwise remain the same, or whether he will come in under an amortization plan, letting him elect between the amortiza-

tion plan and the present?—A. Yes. If I might modify your language, the 5½ per cent, the maximum rate, would be applicable, and then he would elect, having been given the 5½ per cent, as to whether he wanted the other terms of his contract altered—whether he was satisfied to continue on to the present maturity date of the contract with his quarterly payment instead of monthly payment, and without dealing with his own taxes, or whether he would like to have it put on the amortization basis. I would suggest for your consideration that if we consider a 5½ per cent rate, that a ten-year period would be in the interest of the debtor, it should be set before him that amortization was on a longer basis, and if that is the suggestion that Mr. Thorson would like me to consider I would be very glad to take that up with those I have here to consult with with a view to seeing whether such an alternative could be put forward in the same way in which I put forward the suggestion as to non-current mortgages, as one which would in all probability increase appreciably the probability of the bill being workable through the volume of mortgages brought in.

Hon. Mr. DUNNING: If I might be permitted to make a remark, it is now nearly 1 o'clock, I would suggest that Mr. Leonard be given an opportunity during the adjournment to consult with his people. However, before doing so I would like to make just a brief statement regarding this suggestion. There are obvious difficulties, pointed out yesterday by Mr. Leonard, and referred to again this morning by Mr. Thorson. The one I mentioned yesterday in discussion is, from my point of view, very important. I visualize a company—not any particular one—there are several who are in the class I now have in mind who have a relatively small investment in the farm class of mortgages compared with their investment in the class of urban mortgages which would fall within the purview of this Act. Now, the government is most anxious that such a company should not feel itself debarred from co-operating by reason of the volume of loss which it would be compelled to take on its urban properties in order to be able to co-operate with respect to what represented a smaller volume of assets, and I have given some consideration since yesterday to Mr. Leonard's suggestion regarding non-current mortgages and, frankly, I cannot see my way through that. But I would not oppose making the rate 5½ per cent with respect to urban mortgages for the reason that the amortization plan provided for here is probably a little more expensive to operate than in the case of farm mortgages where it does not, of course, apply, and in addition the effective yield to the mortgage company under the National Housing Act is, approximately, 5½ per cent after allowing for the dominion's funds coming in at 3. So it would be in that regard comparable.

Now, with regard to the other point raised by Mr. Leonard, objecting to being forced to arrange for long term amortization of all urban mortgages, I might call your attention to the proviso providing, that the Central Mortgage Bank may specify categories of mortgages for which it may approve through terms of payment. The object of putting in that proviso was to cover numerous cases of this type, for instance, where a mortgage had only a relatively short term to run and had been pretty largely reduced in amount, and it would be rather absurd to compel the company to amortize that over twenty years. We visualized also the possibility of the borrowers saying, "no, I do not want this twenty-year amortization." Now, we would do something to consider a category involving that. So that the section as at present drafted means this, Mr. Leonard, administratively, that you would offer to all mortgagors the terms of twenty years except in cases such as I have mentioned of a short term yet to run. If the borrower did not want it then he would fall within a category to be approved by the Central Mortgage Bank under the proviso in this section. I do regard that as desirable, and I think most of the loaning companies will now agree with me, although I know they did not a while ago on the National Housing Act,

[Mr. T. D'Arcy Leonard, K.C.]

that the twenty-year amortization principle of that Act together with the monthly payments in the same form as rent, have created a much healthier general condition with respect to that class of loans than exist in classes of loans on which you hope to be able to meet a payment some day but you are not meeting it regularly as a man who is in receipt of a relatively small income does.

That is all I need to say at the moment. I suggest that Mr. Leonard might consult with his people.

Mr. CLEAVER: I would like to ask if the minister as well as the companies would consider this suggestion during the adjournment: there is not the same need in the urban field as there is in the rural field for a reduction in the principal of the mortgage, and I would ask the minister to consider as to whether it could be—whether a scheme could be devised under this Act whereby the principal write-off in the urban field would be the excess over 100 per cent appraisal as against the 80 per cent appraisal in the rural.

Hon. Mr. DUNNING: We have already passed that section.

Mr. TUCKER: I would like to make a suggestion to the committee to be considered during the adjournment: I suggest that the rate of interest on all charges of land other than first mortgages should be reduced to, say, 4 per cent. Now, I intend to bring that forward afterwards.

The committee adjourned to meet at 4 o'clock this day.

AFTERNOON SESSION

The committee resumed at 4 o'clock.

The CHAIRMAN: Order, gentlemen. Mr. Leonard, will you please come forward?

P. D'ARCY LEONARD, recalled.

Hon. Mr. DUNNING: I think you might wait a minute. Mr. Leonard would have to repeat this for Mr. Thorson's benefit when he comes in.

The CHAIRMAN: All right, Mr. Leonard.

The WITNESS: Mr. Chairman and members of the committee, in the recess I have had the opportunity of considering with those of the companies that are represented here the suggestion which was raised by Mr. Thorson as to whether the difficulties in connection with the urban mortgages might be overcome, or to what extent they might be overcome by the suggestion as to the 5½ per cent interest rate on the urban mortgages coming within the terms of the bill. To pick up the thread from where I left off, I had indicated the difficulties consisting of, first of all, the impact of that reduction in the interest rates on such a volume of mortgages in good standing particularly throughout Canada, and Mr. Dunning himself has referred to the outstanding cases where that situation will have a very important bearing; namely where companies have a comparatively small amount of farm mortgages in relation to their urban mortgages. They might be enabled to come into a plan with relation to the farm mortgages because of the losses involved in their revenue figure with the good city mortgages. I mentioned also the point that we would have to consider, the mechanics involved in dealing with the tremendous number of city mortgages coming within the terms of this bill. I did throw out the suggestion that the mechanics might be greatly lightened to a point of possibility, if in dealing with these accounts we considered the question of adjustment of interest rates only. The accounts would be dealt with by agreement between—the suggestion I made was, at the option of the debtor, and that it would only be where he elected

that the other terms of the existing contract, such as the length of time the contract should run, the question as to whether payments should be monthly or at other times, would only come by way of the debtor electing to have the terms altered.

Mr. Dunning pointed out the desirability of the monthly payment plan, long-term amortization plan, and the success in connection with the Housing Act, and on what he said with respect to the Housing Act I am in thorough agreement, and as he indicated, I think that is the general opinion of the companies. We did feel, however, that there is a difference in dealing with new mortgages on new construction, and those that would come within the adjustment plan of such mortgages contemplated by this bill. Referring now purely to the question of those mortgages where no question of appraisal comes into the picture, where they are under 80 per cent of value and where the only question is whether or not the bill will contain a reduction in the rate of interest, I think it will be evident to the members of the committee that the large proportion of those mortgages will be mortgages in good standing, mortgages probably that have been running for some years and mortgages in a great many cases that run all the way from a comparatively small amount owing, all through the picture up to the 80 per cent.

Apart from the question of interest rate, all the other terms of the contract will in the very large percentage of the cases be quite satisfactory both to the borrower and the company. In those cases it does not seem to be necessary that there should be raised the question as to whether the payments should be altered to a monthly basis and whether taxes should be paid monthly and amortization period and so forth. I mention this again, and mention it particularly because in dealing with this matter I think you will appreciate that there are some 30,000 odd of city mortgages. I am using just a rough figure without being too definite about it. Taking that number of city mortgages that might come within this plan in so far as our companies are concerned, if in connection with all those mortgages the matter has to be gone into as to an adjustment of the terms apart from the question of interest rates, here is a mechanical problem, and one that does not seem to be necessary from the standpoint of the debtor.

Now, in making that point I do not know whether it is necessary to consider the question of an amendment to the act, because there is now in the act the power—

Hon. Mr. CAHAN: You mean, amendment to this bill?

The WITNESS: Amendment to this bill; excuse me, Mr. Cahan. There is in this bill elsewhere a provision that the Central Mortgage Bank may set up categories with respect to all classes of mortgages. The provision enacted by the bill, a twenty year amortization period, will not be applicable. Some other provision may be applicable to these classes, and it may be that the point that I am making can be covered there. But one of the important matters, and one of the matters upon which I am making the submission to you, is that the companies feel that under any plans dealing with the city mortgages where the debtor and the company are in agreement as to all other terms of the contract and no question arises of appraisal or of a new contract by reason of there being arrears of interest over two years, in all these cases where the company and the debtor are agreed, it is not necessary to do anything further than to lower the rate of interest as between the debtor and the company. Where they are not in agreement, then the categories prescribed by the bank would be the basis upon which the alteration in terms would apply.

After making that point, Mr. Chairman, and on that understanding, after consultation with those whom I represent here, I can say that their feeling is that the change in the interest rate on city mortgages to $5\frac{1}{2}$ per cent with the provision that I have indicated as to mechanics, we feel it would go a very long

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way indeed to overcome the difficulties in connection with the urban mortgage situation to a point where, from my discussion with them, I think that would not prove an obstacle to a very considerable volume of business being represented by membership agreements. I say that after consultation with companies representing, I would say, approximately \$250,000,000 out of the \$380,000,000 or so involved, which I think, might be taken as a fairly representative position. I think that is the position of the companies.

By Hon. Mr. Cahan:

Q. Mr. Leonard, it is difficult to hear. Are you suggesting \$250,000,000 of urban mortgages?—A. Yes, Mr. Cahan.

Q. Would you be willing to state approximately the gross amount of urban mortgages as compared with the gross amount of farm mortgages outstanding in the business of the companies whom you represent?—A. The figures that I gave the other day were approximately \$380,000,000 of city mortgages and approximately \$200,000,000 of farm mortgages. Now, in coming to these figures actually the idea was that they are a compilation of the figures of the insurance companies in the Dominion blue book and of the registrar of loan and trust corporations in Ontario and of the Dominion superintendent of loan and trust companies. They are not the exact figures of our member companies which I have not available. But while our association does not cover all these companies, it does also contain some companies that do not come within those organizations.

Q. That would cover approximately, in your opinion, the volume of the companies to whom this bill will be applicable; that is, as prospective members?—A. There will be other companies, of course, that I presume will be eligible for membership which are not in this association nor do they come within the Dominion and Ontario corporations or companies doing business in Ontario.

Hon. Mr. DUNNING: In giving these figures of urban mortgages, all compiled in the manner you speak of, the figure you give is larger than the sum total of urban mortgages which would be affected by this bill because of the limitations.

Hon. Mr. CAHAN: Quite so.

By Hon. Mr. Dunning:

Q. Can you give us any guide on that?—A. You are quite right. All I can give you on that is an estimate which we have been using ourselves and which might be quite wrong, because there has not been the opportunity of checking among companies since the bill was introduced. I think you will all appreciate the percentage might vary as between say Vancouver, Montreal and Toronto, as to urban homes under \$7,000. The figure we have been using has been roughly one-third of the city mortgages as coming within the classification of non-farm homes under \$7,000.

Q. That would be affected upward somewhat by the change we made with respect to double houses?—A. I think that is correct, Mr. Dunning, and as to the extent, I think the question of some other applications of the interpretation of non-farm homes will have to be defined by regulation.

By Mr. Macdonald:

Q. That would be one-third of \$380,000,000?—A. That is the figure we have been using roughly, Mr. Macdonald.

Q. Roughly \$127,000,000?—A. \$130,000,000 was the figure we were using roughly, yes.

Q. You do not say all these loans would be affected by this act?—A. That is an estimate of the non-farm homes.

By Hon. Mr. Dunning:

Q. That could be affected?—A. That come within the terms of the bill.

By Mr. Hill:

Q. Is that based on \$7,000 or \$14,000?—A. The figure we were using was based on \$7,000.

Q. That would be increased materially by the change we made yesterday?—A. I doubt that it would be very much.

Q. There is a lot between \$7,000 and \$14,000?—A. The increase is only on the double-family house. I understand in Montreal there are some and possibly in Toronto.

By Mr. Macdonald:

Q. You are not suggesting, Mr. Leonard, that this \$127,000,000 in mortgages represents the fair market value of these properties?—A. No, I have no estimate as to how many would come in for adjustment under the appraisal feature; that is to say, over 80 per cent of value. But you will appreciate that under the terms of the bill the reduction in the interest rate applies to the whole category of \$130,000,000 and the point that is under discussion and that Mr. Thorson suggested and the committee asked me to consider was, what would be our viewpoint if instead of the rate, as to that \$130,000,000 that we are figuring as our figure, was set at $5\frac{1}{2}$ per cent instead of 5 per cent.

Q. What would you say would be the average rate on the \$130,000,00?—A. I am once again in the position where any answer might be inaccurate. I would say roughly, over 6 per cent. I should think that it might vary from probably 5.90 to 6.10 per cent, somewhere in there.

By Mr. Clark:

Q. Is the Canada Permanent Mortgage Corporation one of your group?—A. Yes.

Hon. Mr. DUNNING: I have an amendment here upon which I should like to get the sense of the committee. I think the amendment involves a slight alteration of language along the lines we used with respect to the non-farm homes.

Hon. Mr. STEVENS: (g) (i)?

Hon. Mr. DUNNING: The amendment is as follows:—

That sub-paragraph (i) of paragraph (g) of section 16 of the bill shall be struck out and the following substituted therefor:—

(g) (i) Each mortgage on a non-farm home in Canada shall be adjusted to provide that the rate of interest shall not exceed an effective rate of five and one-half per cent per annum.

The CHAIRMAN: Shall the subsection as amended carry?

Carried.

On section (g) (ii).

Carried.

On subsection (g) (iii).

Carried.

On subsection (h).

Mr. TUCKER: In regard to (h), in view of the fact you are applying it only to mortgages entered into before the 1st of January, 1936, I think we should have an amendment there providing—in regard to the farm mortgages it does not matter, because you are taking all mortgages up to the first of this year—

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but in regard to the others, in the case of mortgages entered into after that date, some of them might bear interest at 7 per cent. They might bear interest at 7 per cent from the 1st of January, 1936, and then they would be brought down as of the date of entering into this agreement to $5\frac{1}{2}$ per cent. But there would be a period there of three years during which they would bear a higher rate, so it seems to me we should say: "the member company shall not charge an effective rate of interest on mortgages or renewals thereof entered into after the date of the membership agreement on farms in Canada or on non-farm homes in Canada entered into after the 1st of January, 1936" In other words they would get the benefit of the new adjustment.

Hon. Mr. DUNNING: I think, probably if you will listen to the amendment which I am presenting now to carry out what I indicated earlier, changing (h) in order to provide that the interest control by the bank shall be effective with respect to the moneys borrowed from the bank it will cover it. This is the place where that amendment comes in, and it would read as follows:—

That paragraph (h) of section 16 of the said bill be struck out and the following substituted therefor:—

(h) The member company shall not charge an effective rate of interest on mortgages on farms in Canada and non-farm homes in Canada entered into after the date of the membership agreement where the moneys used in making such mortgages are obtained through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of the membership agreement, in excess of the rate determined by the Central Mortgage Bank in pursuance of this Act and in effect at the time such mortgages or renewals of mortgages are entered into.

That would mean this, that the member company would be obligated in renewing mortgages adjusted in accordance with the earlier provisions of this act, to comply with the regulations of the bank. It would also be obligated to comply with these regulations with respect to moneys which they secured from the bank to advance on new mortgages, and of course, the effective date, dealing with Mr. Tucker's point first, is the date of the membership agreement itself. I think that covers the point.

Mr. TUCKER: That does not cover the point, Mr. Chairman, because for example, a mortgage entered into on the 2nd January, 1936, may be at 7 per cent interest. That will not be covered by this adjustment.

Hon. Mr. DUNNING: That is an urban mortgage?

Mr. TUCKER: That is an urban mortgage. Therefore, in regard to the rate of interest which they shall bear, it seems to me that the rate of interest should be written down even if you are not adjusting it.

Hon. Mr. STEVENS: That would reverse the decision of yesterday.

Hon. Mr. DUNNING: It would, I am afraid.

Mr. TUCKER: I do not want to waste any time.

Section carried.

The CHAIRMAN: On section (i).

Hon. Mr. DUNNING: Now, section (i) has to be adjusted to deal with the same matter. The amendment reads as follows:—

That paragraph (i) of section 16 of the bill be struck out and the following substituted therefor:—

(i) The member company shall not impose charges or penalties in respect of mortgages on farms in Canada and non-farm homes in Canada entered into after the date of the membership agreement where the moneys used in making such mortgages are obtained

through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of the membership agreement in excess of those approved by the Central Mortgage Bank.

We are not denying the possibility of charges but desire to have them controlled.

Hon. Mr. STEVENS: Approved by the Central Mortgage Bank.

Hon. Mr. DUNNING: I may say with respect to section 16, it would be very desirable after we get through with it, to arrange to have a mimeographed copy of the whole of section 16 as we have amended it before the members of the committee at the next sitting so there will be no question regarding the amended verbiage.

Mr. HILL: The way you have it amended now you are going to have this situation: you will have two neighbours right alongside each other in an urban district borrowing from the same company. One would be paying 7 per cent and the other 5 per cent. One fellow would say, why can't I get 5 per cent? The company will say, we are lending you our money. The reply will be, how is the other fellow getting it? The answer will then be, we are loaning him government money. We will then have the remark, that is all very well, but why can't I get a loan of this government money?

Hon. Mr. DUNNING: That is not the way it will work. Obviously when a member company borrows from the central bank it will tend to want to use those funds in its most highly competitive field, where its rate level is lowest. You can make up your mind that no company in the mortgage business is very likely to be loaning to next door neighbours at different rates of interest. I think you have imagined something there.

The CHAIRMAN: Shall the section as amended carry?

Carried.

On Section (j).

Carried.

On section (k).

Mr. COLDWELL: Could we have an explanation of this?

The CHAIRMAN: Which section?

Mr. COLDWELL: The whole of (k). To what provinces, in the view of the minister, will this particular section apply?

Hon. Mr. DUNNING: It may apply to all of them but one.

Mr. COLDWELL: That is just the point.

Hon. Mr. DUNNING: We cannot tell without an examination of all the various enactments—and their name is legion—at the present time across Canada that affect the rights of mortgagees with respect to their contracts.

Now, we are not anxious from the standpoint of government policy to make it impossible for a province to deal with the matter; rather the reverse, and I would stress this point, that the provinces may and probably will act with respect to mortgages adjusted under this legislation.

Mr. COLDWELL: Differentiate between the two.

Hon. Mr. DUNNING: Such provinces as I have heard from quite informally about the matter indicate that they would welcome the opportunity to get rid of a great deal of their mortgage difficulties, which various types of moratoria legislation have got them into. I admit at once it will require very careful examination; but after all, is not the principle simple? Speaking of normal times, a man enters into a contract; he understands that the ordinary courts of the lay judge between him and his creditors. It is a matter of equity, the interpretation of the contract under the law. Well, now, our natural desire will be

[Mr. T. D'Arcy Leonard, K.C.]

in respect to these contracts which have to do with dominion credit, to have that situation restored; and I am one of those who think it would be in the interest of the debtor classes generally to have it restored. But I admit that it cannot be restored unless it is preceded by a degree of adjustment which makes it practicable.

Mr. Ross: What about subsequent legislation?

Hon. Mr. DUNNING: Ah, now, you are getting into difficulties there. There you get into the field of high constitutional controversy. We may as well face it. Let us assume a province passes legislation making possible the operation within that province of this act under the terms of this section and that subsequently a future legislature in the province repudiates the whole thing and it ceases—

Hon. Mr. STEVENS: Then, those who operate under the act will simply stop loaning there.

Hon. Mr. DUNNING: There would be another possibility in view of the interest of dominion taxpayers as a whole. I am inclined to think personally that the power of disallowance would be very properly exercised if such action were taken.

Hon. Mr. STEVENS: Of course, I venture this that it would be most unwise for us to suggest such a contingency because we do not know what the legislation may be.

Hon. Mr. DUNNING: Oh, yes.

Hon. Mr. STEVENS: But I think that the ordinary economic laws would operate as they have operated to a certain extent up to the present. If the legislation was inimical to the general theory of philosophy of this legislation then the tendency would be to withdraw from that field. I think we can leave that future possibility to take care of itself.

Hon. Mr. DUNNING: Oh, yes.

Mr. Ross (*St. Paul's*): You may have legislation passed with respect to member companies, and on the other hand what will the province do with respect to the individual mortgagee? You have got a very difficult situation there it seems to me.

Mr. MACDONALD: You are crossing too many bridges before they appear.

Mr. Ross: No, but we have this thing to think about at present. We have a tremendous number of mortgagees and mortgagors that will not come under this adjustment at all.

Hon. Mr. DUNNING: I am of opinion, Mr. Ross, that if we can re-establish what I might call normal contractual relations between a great group of member companies and their borrowers, within a province, that the tendency of the provincial legislation generally will be with respect to others not directly affected by the bill, to make provision releasing once more the normal flow of credit.

Hon. Mr. STEVENS: The tendency would be the other way—that is, in favour of the independent debtors.

Hon. Mr. DUNNING: Undoubtedly.

Mr. Ross: It might be very discriminatory there.

Hon. Mr. DUNNING: I am afraid we cannot control that here, Mr. Ross.

Mr. JAMES: What would be the effect of the legislation already in effect in a province which might affect these companies?

Hon. Mr. DUNNING: In nearly all provinces there is some legislation of this character.

Mr. COLDWELL: Legislation would be repealed in as far as—

Hon. Mr. DUNNING: Or declared not to be applicable to mortgages adjusted under the terms of this Act.

Mr. TUCKER: Any individual could refuse an adjustment and still have the benefit of the debt adjustment legislation in his province. Under subsection (l) the individual would have a choice.

Hon. Mr. DUNNING: Yes. I would hope he would not do it. He would be very foolish to do it, but he could.

Mr. COLDWELL: The point is that the province is not compelled to repeal—

Hon. Mr. DUNNING: No. We cannot say to a province what its legislation shall be with respect to something in which we are not concerned, but to the extent that we are concerned by the use of the Dominion credit we say to them, "in order to get the use of a Dominion credit here is a condition."

Hon. Mr. STEVENS: In your territory.

Hon. Mr. DUNNING: Yes, in your territory.

Mr. JAKES: If the province wanted to benefit it would have to repeal—

Hon. Mr. STEVENS: No, it would have to adapt its existing legislation to this Act, excepting the borrowers under this Act from the application.

Mr. JAKES: Individual borrowers.

Hon. Mr. STEVENS: As a class. There is no difficulty about it.

Mr. JAKES: You do not mean as it affects individuals, but classes.

Mr. COLDWELL: It affects individuals as well as classes.

Mr. JAKES: As it affects the class of debtor but not individuals.

Hon. Mr. DUNNING: Absolutely, the class of debtor being those individuals who were indebted to member companies under this Act, and whose mortgages are adjusted in accordance with the terms of this Act. Then the provincial legislature, we hope, will say that their own restrictive provisions shall not apply to those mortgages.

Mr. JAKES: It is much the same as the Farmers' Creditors Arrangement Act.

Hon. Mr. DUNNING: I think, probably, a better illustration, having in mind your own province, would be the Housing Act—no, the Farm Loan Board is a better one. Your legislation declared that mortgages granted by the Canadian Farm Loan Board should not be subject to the moratoria legislation of your province.

Mr. JAKES: They were exempt.

Hon. Mr. DUNNING: Yes, exempt.

The CHAIRMAN: Shall the section carry? (Carried.)

Shall section (l) carry? (Carried.)

Mr. TAYLOR: What is the precise effect of the last portion of (l)? "or that any other person whose consent to the adjustment of the mortgage is necessary. . . ." What is contemplated there?

Hon. Mr. DUNNING: There are varied laws in various provinces in which the wife is involved, and there are a number of such contingencies which it is thought well to provide for. If you are prevented for any reason by the debtor or by anyone who has authority with respect to the debtors from acting, then the member company should not be compelled to make an adjustment.

Mr. TAYLOR: Suppose such a consent is withheld to the detriment of the debtor?

Hon. Mr. DUNNING: I am afraid he would have to be the judge of that.

The CHAIRMAN: Shall subsection (m) carry?

Hon. Mr. DUNNING: Now, there is an amendment to (m) consequent on our having introduced the cut-off date earlier. It will involve the dropping of (n) and the amendment to (m) is as follows:—

[Mr. T. D'Arcy Leonard, K.C.]

That paragraph (*m*) of section 16 of the bill be amended by striking out the words "paragraphs (*n*) and (*o*) of this section" in line 40 on page 7, and substituting therefore the words "the next succeeding paragraph."

The CHAIRMAN: Shall (*m*) as amended carry? (Carried.)

Hon. Mr. DUNNING: I move that clause (*n*) be deleted.

The CHAIRMAN: Shall it carry? (Carried.)

The CHAIRMAN: Clause (*o*). Carried.)

Shall clause (*p*) carry? (Carried.)

Shall clause (*q*) carry?

Mr. MACDONALD: Mr. Chairman, with regard to clause (*q*) I have something to say. This morning we were discussing section (*d*) and I suggested that the words "80 per cent of the fair value of the property" be changed to "90 per cent." There was another suggestion which was by way of amendment that the word "80" be changed to "100 per cent." I did not support the words "100 per cent" for the reason that if the words "100 per cent" went in then the mortgagor would have no equity in the property, and in view of section (*q*) the government would still be paying one-half of the loss by virtue of adjusting the mortgage, that is any additional principal, arrears of interest and other charges, so that if the words "100 per cent" had appeared in the section, then the government would have been saved the 10 per cent, and the loan company 10 per cent. Now, Mr. Chairman, I presume that the loan companies are prepared to pay this 10 per cent. If they are not, of course, they will not come into the arrangement. The bill as it at present stands is that the amount of the mortgage will be reduced to 80 per cent of the fair market value, and the government stands 10 per cent and the loan companies stand 10 per cent. As I said this morning, Mr. Chairman, I feel there should be some equity left to the mortgagor, and I feel that the equity would be sufficient if it were 10 per cent.

Hon. Mr. CAHAN: That expression is confusing to my mind. It is one-half of the loss occasioned by the adjustment.

Hon. Mr. DUNNING: Yes.

Mr. MACDONALD: I was speaking more of the mortgagor's position—the man living on the farm. If this farm is revalued and the mortgage is fixed at the full valuation he may not have an incentive to go on, but if he gets a 10 per cent reduction and the mortgage is fixed at 10 per cent less he has an equity in the farm to start with. Now, I cannot see why the people of Canada should pay an additional 10 per cent. I am quite satisfied—at least I am not satisfied, but if the bill is going through I would suggest that all the people of Canada should be required to pay would be 50 per cent of the loss occasioned to the companies over and above the loss in principal above the fair value together with loss in interest and taxes. The final result would be that the farmer—I should not say the farmer because there are some city mortgagors—but the mortgagor would have his mortgage at 90 per cent of the value to-day which value must be the lowest value which that land will have attained. That is my information. I feel we are at the depth when we come to values of land to-day. If lands are to continue to go down in value then this Act is of very little or no effect. Therefore, the owner has a mortgage on his land of 10 per cent of the value in the worst times so far as real estate is concerned, and the loss which the mortgage companies will face will be no greater by my suggestion, because under the previous arrangement of 80 per cent—and I am just making this as a suggestion, Mr. Chairman, because I feel the minister is here to receive suggestions and consider them

if they are in the best interests of the country—under my suggestion the mortgage money will bear no greater loss than if the value were fixed at 80 per cent, and the government, the people of Canada would have a saving because they would not be called upon to pay that 10 per cent. All they would be called upon—it would be very considerable—would be one-half of the loss in principal over and above the fair market value, plus one-half the loss of interest and other charges. Now, in my opinion that would save the people of Canada anywhere from \$7,000,000 to \$15,000,000, and the people who should pay it will be called upon to pay it—they are the owners; they contracted the debt. If we can save the people of Canada anywhere from \$7,000,000 to \$15,000,000 I feel we should do so. I still feel that my suggestion is a good one and that the word “80” should be changed to “90,” and in the section we are dealing with, section (g), that the section should be amended by adding after the word “principal” in the fortieth line the words “in excess of the fair value of the property as appraised under this Act.” If I move that now, leaving the word “80” in the former section, it will mean that mortgage companies will have to bear 20 per cent of the loss, which I do not intend.

Hon. Mr. DUNNING: You cannot amend a section that is already carried, Mr. Macdonald, very well.

Mr. MACDONALD: I feel that if it is right in the interests of the country that the section should be amended, this committee has power to reconsider it.

Hon. Mr. DUNNING: That is right.

Mr. MACDONALD: We can reconsider this section.

Hon. Mr. DUNNING: If you want to do that you can.

Mr. MACDONALD: I do not know whether it is proper at this time, but I would like to get the opinion of some others on the committee. If it is proper I would move that subsection (d) of section 16 be reconsidered. I am not moving that now until some other members of the committee express their opinion on the suggestion I have made.

Hon. Mr. DUNNING: I believe a motion for reconsideration is not debatable; that is, you cannot reconsider the section itself under the guise of a motion to reconsider it; you must first settle whether you are going to reconsider it, and then the debate is in order.

Mr. MACDONALD: I did not move, Mr. Chairman, that the section be reconsidered at this time, but I intimated that at a future time, after there had been some discussion, if I deemed it advisable and the committee did, I would then make the necessary motion; but I was looking for an expression of opinion from some members of the committee in the meantime.

Hon. Mr. DUNNING: I suggest that the discussion really must be confined to (g) unless there is a motion for reconsideration adopted by the committee of the section to which Mr. Macdonald refers.

Mr. MACDONALD: I am prepared to move it, and in moving it I want to impress upon the committee that there will be no harm done to the mortgage companies if this section is reconsidered, as they are paying their 10 per cent anyway and it will save millions of dollars to the taxpayers of this country, and I think the section should receive further consideration, and I will move that the section—

Hon. Mr. DUNNING: What section is that?

Mr. MACDONALD: Paragraph (d) of section 16, be reconsidered.

The CHAIRMAN: You have heard the motion; what is your pleasure, gentlemen?

Hon. Mr. STEVENS: It calls for a two-thirds majority.

(On a show of hands the chairman declared the motion lost.)

[Mr. T. D'Arcy Leonard, K.C.]

Mr. Ross: May I ask the minister if he can tell me what proportion of farm mortgages in Canada and what proportion of city mortgages in Canada will be adjusted under this bill?

Hon. Mr. DUNNING: I cannot answer that question. I must have a lot more information. I must know how many companies are coming in.

Mr. Ross: Suppose all the companies come in?

Hon. Mr. DUNNING: This morning Mr. Leonard gave us some information bearing upon that, and again this afternoon he referred to relative volumes of urban and rural mortgages. It must be remembered too, Mr. Ross, that when you say adjustment, the great bulk of adjustments will be in the rate of interest. There will be some further adjustments with respect to interest arrears in excess of two years, but that will not be universal by any means. There will again be some adjustment in the limited field of the basis of value.

Hon. Mr. CAHAN: That will be very considerable, I should think.

Hon. Mr. DUNNING: Do you think it will? I have an amendment on (q) to facilitate the carrying out of the suggestions made by Mr. Leonard with respect to the mechanics of appraisal, to permit settlements, to facilitate the making of settlements in advance of the actual appraisal work. The amendment would add to the end of (q) the following words: "After appraisals have been made or accepted under the provisions of section 17 of this Act; provided however that if any appraisal is revised under the provisions of section 17 of this Act after any debentures have been delivered to the member companies, the amount of the debentures shall be adjusted in accordance with the revised appraisal."

When we come to 17 it will be necessary to make provision, and I am amending this to fit into it as we go along.

Hon. Mr. CAHAN: It is really difficult to follow the wording, but this will be reprinted.

Hon. Mr. DUNNING: It was my intention to ask the committee to leave section 16 standing this evening and by to-morrow morning we will have complete mimeograph copies of the section as it will appear.

Hon. Mr. CAHAN: You might allow in case there has been a misunderstanding for reference to be made in the discussion to this proposed amendment?

Hon. Mr. DUNNING: I do not see how we can avoid it. I myself in that respect rely on the committee itself. I think you are right quite right there. We are anxious to have our intention clear—all of us—and I make the suggestion regarding the mimeographed copies in order to make sure that is done.

Hon. Mr. CAHAN: It is excellent for our purposes.

Hon. Mr. DUNNING: I have another reason, which I will refer to now, and that is that the Department of Justice is working with us on this matter continuously in the light of all the suggestions, and this section of the bill as a whole was gone over many times by the Department of Justice both before the bill was introduced and since, and they have suggested to us some purely verbal changes which they think will improve the draftsmanship. The changes are minor and are really not very consequential. For instance, in the opening phrase the words are, "each membership agreement shall include provisions to the following effect" and so on, and the Department of Justice suggests that it would probably be preferable to make the opening phrase read as follows: "Each membership agreement shall include provisions to the following effect, namely, that." I do not see much difference.

Hon. Mr. CAHAN: I think the more effective way would be to say, "each membership agreement shall be deemed to include".

Hon. Mr. DUNNING: The draft as it is here is in the way the Department of Justice originally approved it. This suggestion I have is a slight change in verbiage suggested by them, and there may be, as Mr. Cahan says, other suggestions.

Hon. Mr. STEVENS: If you strike out the semicolon in what you have just read, it carries on in proper sequence in the present draft.

Hon. Mr. DUNNING: I am referring to the section as an illustration for the need of the mimeographing.

Hon. Mr. STEVENS: The whole bill will be reprinted?

Hon. Mr. DUNNING: I hope so, yes.

Hon. Mr. CAHAN: I suggest that in preparing the mimeographed copy, if there are any verbal changes that the Department of Justice wish included, you should include them.

Hon. Mr. DUNNING: That is my point. As a matter of fact, the slight one which I just read and which you commented on is the only one, except that it changes all the way through the word "shall" to "will". I cannot see the force of it myself, but I am not a constitutional lawyer or a draftsman.

Mr. MACDONALD: Since we appear to be talking generally about this Act, may I ask for information, although what I have to say has no proper bearing on this clause, how second mortgages are to be adjusted?

Hon. Mr. DUNNING: This Act does not contemplate dealing with second mortgages.

Mr. MACDONALD: The Act does not contemplate dealing with second mortgages? It improves the second mortgage position considerably, and the second mortgage might then conceivably have a security almost as good as the first mortgage, and he gets 100 per cent of his money. I do not see how it can be otherwise.

Mr. THORSON: It cannot be helped.

Mr. MACDONALD: I say it is a second mortgage and is as good as the first, and he is going to get the amount of his money back with the full interest on it.

Hon. Mr. CAHAN: It is clear that this does not annul second mortgages.

Hon. Mr. DUNNING: Oh, no.

The CHAIRMAN: Shall paragraph (q) carry as amended?

(Carried.)

Shall paragraph (r) carry?

Mr. CLEAVER: Is it the intention that the central bank shall simply receive as security the actual adjusted mortgage, or is it the intention that the central bank shall receive these mortgages as securities plus the covenant of the loaning company?

Hon. Mr. DUNNING: You can not have read (r). It makes it clear that what the central bank buys from the member companies are bonds, debentures, certificates or other evidences of indebtedness to an amount not exceeding the total of the principal amounts of the mortgages.

Mr. CLEAVER: Yes, I read that, but I also know it is the practice now in some provinces for companies to simply set aside a certain group of assets and make those assets as the sole security for the repayments of the bonds without grouping with it the personal covenant of the company.

Hon. Mr. DUNNING: The intention here is to make the evidence of indebtedness or debenture the general security of the company.

Hon. Mr. STEVENS: There is one question I should like to ask the minister: "Other evidences of indebtedness"; is not that too wide?

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. DUNNING: It is rather a broad term. It was felt it was necessary not to be too confining because of the great variety of the nature of the business conducted—trust companies, for instance, and others.

Mr. TUCKER: In order to protect the government in this matter a company could give evidence supposing it had an indebtedness total of \$10,000,000 it could give those debentures to the government for \$10,000,000 and it might get into difficulties and have its mortgages attached and then the \$10,000,000 which was held by the government of the debenture would be worthless. It seems to me there should be a provision in this clause that to the extent to which it holds debentures of the company, the government should hold a first charge on the equivalent amount of mortgages of the company as adjusted. In other words, it should hold more than a promise to pay of the company; it should have some security, and on the mortgages of the company as adjusted. It seems to me that should be quite clear.

Mr. THORSON: Is it not the intention in the bill that the adjusted mortgages shall be the security back of the bond issue?

Hon. Mr. DUNNING: In general, yes.

Mr. THORSON: It does not say so.

Hon. Mr. DUNNING: That is because of the wide variety of the nature and manner of doing business in various companies and in various parts of Canada. Let me take a case in point: Here is a series of adjusted mortgages which are all pledged with respect to some savings debentures which have not yet matured. Now, the type of obligation the central bank would take in that case would differ from the type of obligation taken in cases where no such prior security existed. I hesitated a long time before leaving the latitude as wide as it is; but in view of the variety of cases involving prior security already in existence which might prevent a company coming in at all and getting its mortgages adjusted for, say, two or three years to come, I felt it well to draft our amendment having regard to making the amount—

Mr. TUCKER: There should be power though, Mr. Chairman, given to take security satisfactory to the governor of the bank. There is no power even to take security on the mortgages. There should be power given to take security over these mortgages.

Mr. THORSON: Is not that really covered by the implication? This is what it says:

The Central Mortgage Bank may agree to buy, at face value, from a member company bonds or debentures or certificates or other evidences of indebtedness. . . .

They state there the conditions, subject to which they will buy. One of them may be that the bonds or debentures shall be secured by such securities as the company may have, either adjusted mortgages or some other security.

Hon. Mr. DUNNING: If you refer, Mr. Tucker, to section 22, you will see power there. The section that we are now considering is merely permissive, whereas section 22—

Hon. Mr. CAHAN: Will you please allow a suggestion in regard to the words "other evidences of indebtedness"?

Hon. Mr. DUNNING: Certainly.

Hon. Mr. CAHAN: This would include, would it not, the fully registered non-transferable debentures of the Central Mortgage Bank which are to be delivered to a member company under line 36 in the security on the same page, which would permit the Central Mortgage Bank to buy back its security unless there is other evidence—

Hon. Mr. DUNNING: It certainly is not so intended.

Hon. Mr. CAHAN: The thing is so broad it would include that, I should think.

Hon. Mr. DUNNING: "Issued or to be issued by the same." They must be issued by the member company. That would eliminate that possibility, Mr. Cahan.

Hon. Mr. CAHAN: When they had to re-issue them? All they do is re-issue them.

Hon. Mr. DUNNING: No, they cannot.

Hon. Mr. STEVENS: What you really mean to say is "from the member company in bonds or debentures."

Hon. Mr. DUNNING: When we say "to be issued by the same", we mean issued by the member company. The issuing body is—

Mr. MACDONALD: The company could give its note.

Hon. Mr. DUNNING: We won't take it.

Hon. Mr. CAHAN: I think Mr. Stevens suggestion should be carried out; it should be clearly indicated.

As suggested by Mr. Cahan or any of the draftsmen of the committee, I believe they would catch the point and probably put it in better language than I can; but obviously it is intended to limit the words "bonds, securities and debentures" to the company.

Hon. Mr. DUNNING: Yes.

Hon. Mr. STEVENS: That is the borrowing body. I suggest it might be covered by simply adding one word, "the central bank may agree to buy at face value from a member company its bonds or debentures or certificates and so on".

Hon. Mr. DUNNING: Just put in the word "its". I do not see how we could make it any worse.

Mr. JOHNSON: I would be afraid if a member company had bought outright bonds of the dominion government or some other government that somebody may say that these are its bonds.

Hon. Mr. STEVENS: You qualify that by subsequent words "issued by the same."

Mr. JOHNSON: You would leave that in too.

Hon. Mr. STEVENS: Add the word "its". That makes it perfectly clear.

Hon. Mr. DUNNING: I have no objection to putting in the word "its".

Hon. Mr. CAHAN: As it reads at the present time it is ". . . or other evidences of indebtedness issued or to be issued . . ." I doubt if these words "issued or to be issued by the same" apply to bonds or debentures unless you have such an amendment as Mr. Stevens proposes.

Hon. Mr. DUNNING: I agree to it immediately. The word "its" goes in there. You check that, Mr. Johnson. Shall we say carried?

The CHAIRMAN: Shall the paragraph as amended carry? Carried.

Mr. THORSON: May I ask whether any power is given to the bank to take mortgages as collateral? Is that adequately covered?

Hon. Mr. DUNNING: That is in section 22.

Mr. THORSON: I ask it now because it may not be asked again.

Hon. Mr. DUNNING: What we are now discussing is permissive; 22 deals specifically with that point.

The CHAIRMAN: On section (s). Carried.

[Mr. T. D'Arcy Leonard, K.C.]

On subsection (i). Carried.

On subsection (ii).

Hon. Mr. CAHAN: In (s), if I may be permitted, Mr. Chairman, the membership agreement may be cancelled by the member company. Is there any where in these provisions clauses which indicate what will happen after the membership agreement is cancelled?

Hon. Mr. DUNNING: That is (i), (ii), (iii) that we are now considering.

The CHAIRMAN: Just turn over the page.

Hon. Mr. DUNNING: These are the conditions of cancellation.

Hon. Mr. STEVENS: First they give notice, ninety days.

Hon. Mr. DUNNING: Then they pay back the debentures they have got from us.

Hon. Mr. STEVENS: Surrenders to the mortgage bank all debentures.

The CHAIRMAN: Subsection (i) (s). Carried.

On subsection (ii). Carried.

Mr. MACDONALD: I do not understand these sections. I think we should have it explained if a company withdraws from the agreement what happens to the mortgages that have been adjusted?

Mr. TUCKER: They are adjusted. They remain contracts between the company and its borrowers.

Hon. Mr. DUNNING: They are adjusted. What happens is this: if a member company wishes to get out it must give notice, as provided for by (i), and it must surrender to the bank the bank's debentures which it holds, having received them as a 50 per cent adjustment. They must surrender them less any payments by way of interest and amortization received from the bank prior to withdrawal, and thirdly, they must buy back any debentures which the bank has purchased from them, with respect to new loans. These are the conditions.

Hon. Mr. CAHAN: Let me see. All registered non-transferable debentures of the Central Mortgage Bank must be surrendered without compensation.

Hon. Mr. DUNNING: Without compensation except to the extent of having been already amortized.

Mr. ROSS: Without any compensation at all?

Hon. Mr. DUNNING: Yes.

Mr. TUCKER: They have already been paid under the amortization.

Hon. Mr. DUNNING: Yes, quite.

Hon. Mr. STEVENS: They are as they were.

Hon. Mr. CAHAN: I doubt, with deference, as to whether under clause (ii) the surrendering to the Central Mortgage Bank of all stocks, debentures, received from the latter implies that they are to be surrendered without compensation.

Hon. Mr. DUNNING: It goes on to qualify, Mr. Cahan.

Hon. Mr. CAHAN: It says the member bank may retain any payments by way of interest, etc.

Hon. Mr. DUNNING: Prior to the date of the first publication of notification of intention to cancel.

Hon. Mr. CAHAN: There may be an implication there, but it is not clear, I do not think.

The CHAIRMAN: Shall the paragraph carry?

Paragraph carried.

Mr. MACDONALD: Before we come to section 17 let me ask another question with regard to mortgages held by trust companies. As members of the committee know, trust companies act to a very large extent as executors of estates, and the mortgages in an estate are then held by the trust company. They are the holders of the mortgage. Now, are the mortgages in estates which trust companies are administering included in this act?

Hon. Mr. DUNNING: No.

The CHAIRMAN: On section 17.

Hon. Mr. CAHAN: Please, Mr. Chairman. I should like to refer to clause (iii) which says: "if the Central Mortgage Bank so requires, redeeming or purchasing from the Central Mortgage Bank at face value, bonds, debentures, certificates or other evidences of indebtedness and preferred stocks of the member company held by the central bank. . . ." I dislike that idea.

Hon. Mr. DUNNING: On that point, Mr. Cahan, I remember you mentioned in the house that point, and I have given consideration to it since. I am of opinion that we ought to drop the preferred stock altogether. It comes into the clause here because it is consequential on what is involved in 22. I agree entirely that preferred stock should be left out. We were trying to widen the kind of security we might take to the utmost but I do not like the idea of preferred stock.

Hon. Mr. STEVENS: Hear, hear.

Hon. Mr. DUNNING: If you strike out the words "and preferred stock" in line 17—

Hon. Mr. STEVENS: Then we will make the necessary amendment to the main clause as we come to it.

Hon. Mr. DUNNING: It just happens to be the case that it comes up here—

The CHAIRMAN: Shall paragraph (iii) of clause (s) as amended be carried? Carried.

Hon. Mr. DUNNING: Then, with regard to section 16 as a whole, it is understood we will have before us the completed section 16 in mimeograph form for general adoption. I hope the committee will not want to reopen that discussion, when we get it in mimeograph form.

Hon. Mr. CAHAN: Except for purely verbal changes.

Hon. Mr. DUNNING: I am going to suggest to the Department of Justice that any verbal changes will be included in the mimeographed form.

The CHAIRMAN: On section 17.

Hon. Mr. DUNNING: There is an amendment here, Mr. Chairman. The amendment has to do with the appraisal question which we have already discussed fully, and it is intended to carry out what I think the committee agreed was desirable. That is the provision for action in advance of the definitive appraisal contemplated by the act, and it would involve adding this proviso to subsection (1) of section 17. The section would then read as follows:—

That subsection (i) of section 17 of the bill be amended by adding thereto the following proviso:

Provided that the Central Mortgage Bank may accept, subject to such further investigation as the Central Mortgage Bank may decide to make, an appraisal agreed upon by the debtor and the member company.

It leaves the whole of the appraisal provisions in full force, but provides that an initial step be taken.

[Mr. T. D'Arcy Leonard, K.C.]

Mr. Ross: Would you read it again?

Hon. Mr. DUNNING: (Reads).

Mr. DONNELLY: This section makes provision for an appeal by a member company. Suppose the individual is not satisfied with the appraisal made by the bank; has he any right to appeal at all?

Hon. Mr. DUNNING: That comes in really under subsection (ii) of the section.

Hon. Mr. CAHAN: I should like to ask a question on subsection (i). Who bears the expense of these many individual appraisals?

Hon. Mr. DUNNING: It is in the second subsection.

Mr. TUCKER: Mr. Chairman, the minister has just suggested that this is all covered by subsection (ii). It is not covered by subsection (ii). There is only a provision made for a member company appealing.

Hon. Mr. DUNNING: I was answering Mr. Cahan. The question Mr. Cahan asked is covered by (ii), I believe.

Mr. DONNELLY: The question I raise is this: suppose a person has a mortgage on his farm. There is an appraisal made of that farm—

Hon. Mr. DUNNING: Here is the way I look at that, doctor. Following this amendment to subsection (i) the company endeavours to reach an agreement with the debtor as to the appraisal. The debtor is not satisfied with the company's offer; the debtor therefore in effect appeals to the appraisal provisions of this act, because he refuses to accept the initial offer made by the creditor, and the machinery as set up here means that it is our business to watch the interests of the debtor. Frankly, I shrink away from any long-drawn-out proceedings such as would be involved by the use of similar machinery to the Farmers' Creditors Arrangement Act.

Mr. DONNELLY: That is our trouble out there now.

Hon. Mr. DUNNING: You cannot make it work fast enough.

Mr. DONNELLY: The appraisals are not worth anything.

Hon. Mr. DUNNING: We provide here for the maximum arrangement of agreement. If the debtor is not satisfied with the appraisal of the mortgage company he appeals to the machinery set up by the act, and then the appraisal machinery has one representative of the mortgage bank, one of the creditor and one appointed by the two of them. I think we are covering—

Mr. HILL: Governed by the majority.

Mr. DONNELLY: The debtor should have someone there.

Hon. Mr. DUNNING: I do not know how you are going to do it. We have tried under the Farmers' Creditors Arrangement Act to give the debtors representation. The government interest in the matter—

Hon. Mr. CAHAN: He cannot be aggrieved in any circumstances.

Hon. Mr. STEVENS: Anything that happens under this Act benefits the debtor.

Hon. Mr. DUNNING: Absolutely.

Hon. Mr. STEVENS: That is the basis of the Act.

Hon. Mr. DUNNING: Yes.

Hon. Mr. STEVENS: If he is not satisfied he can refuse to consent and then there is a further appraisal.

Mr. CLARK: Mr. Chairman, in regard to appraisals I should like to inquire whether there would be any special rule for an appraisal. I have had some experience with farms and I was wondering what rule was going to be applied with regard to appraisals. For instance, I know a farm, and it is quite possible that there may be three appraisals, and the three of them put different prices on

that farm. They may vary to the extent of \$14,000. One appraiser may say \$7,000 is the value of the farm, another \$14,000 is the value and another \$21,000. If the mortgage, for instance, was \$7,000 or \$10,000, it makes a very great deal of difference. It would mean a very large loss possibly would have to be written off. Then, with regard to a mortgage on a farm, the amount is unlimited, I believe. Is that correct?

Hon. Mr. DUNNING: What amount?

Mr. CLARK: On a farm?

Hon. Mr. DUNNING: No.

Mr. CLARK: It would be possible in a case of that kind for the mortgage to be, say, \$15,000, and the farm to be valued at \$7,000 or \$8,000. There would have to be a loss written off right there of around \$8,000. I think these are extraordinary conditions to incorporate in a law that extends throughout Canada. I wonder if this, after all, is not more or less a sectional act? I cannot conceive of it applying, for instance, to the maritime provinces effectively. I believe it will apply to the west. I wonder if it is possible to have some plan for the appraisals? What are the conditions going to be for the appraisals? Are they to be governed by certain rules; how are their values to be arrived at in the different parts of Canada? Would it be the same value for all property? Even then you would have a difference of opinion with regard to it. Would it be in relation to the cost of the property or what would be the value in that regard? Then, I have wondered if it is going to be possible for a member company to buy up properties of non-member companies?

Hon. Mr. DUNNING: Well, yes. I suppose a member company can buy mortgages of non-member companies, but those paid up mortgages would not qualify for the adjustment features of the act under the sections that we have previously dealt with.

Mr. CLARK: They would not apply?

Hon. Mr. DUNNING: No; because all mortgages of the member companies have a certain date on which they will qualify. Obviously if they went out and bought a lot subsequently they would not qualify.

Mr. CLARK: It would be the same mortgage, but simply assigned to another company. All assigned mortgages are not going to be affected by this act, are they?

Hon. Mr. DUNNING: An assigned mortgage owned by a member company on the date of the membership agreement would belong to it; but it obviously could not go out on a subsequent date and acquire more mortgages and bring them in for adjustment.

Mr. CLARK: They have two years in which to become members.

Hon. Mr. DUNNING: No, one year.

Mr. CLARK: There may be a good many transactions between now and that time.

Hon. Mr. DUNNING: There may be, and to that extent, to the extent that they are transactions within the year prior to their becoming members, then any mortgage thus acquired would qualify.

Mr. CLARK: Would be adjusted?

The CHAIRMAN: Shall paragraph (i) of section 17 as amended carry?

Carried.

On subsection (ii).

Mr. COLDWELL: Mr. Chairman, this is where we get the difficulty that the Minister of Finance mentioned before. This section says: "... each committee shall consist of three members, one appointed on the recommendation of the member company, one appointed on the recommendation of the Central Mort-

[Mr. T. D'Arcy Leonard, K.C.]

gage Bank and one appointed on the recommendation of the two members so appointed". Now, the weakness of that board as I see it is that it will be predominantly governed by the viewpoint of what I consider the financial end. As the minister said, there is a difficulty in getting some debtor representation. I should like to see, as a matter of fact, the government appoint the third member rather than have these two parties. I would rather trust the government to do it than—

Hon. Mr. DUNNING: If you are moving to approve the government, that is quite a concession; I appreciate that.

Mr. COLDWELL: I did not say this government, I said "the government" whatever it might be, because I think the government may be more susceptible—

Hon. Mr. CAHAN: To public influence.

Mr. COLDWELL: To the debtor interests than the two parties mentioned in this act.

Mr. MACDONALD: The third is approved by the government.

Mr. COLDWELL: No, I think it is removed from the government. I do not think the government would take the responsibility for what the Central Mortgage Bank does in detail; as to general policy, yes. I think it would be better to have the government appoint the third party. While I am on my feet may I say this, because I do not want to be on my feet too much. I see a tremendous amount of difficulty in making these appraisals. As Mr. Clark said, upon what basis is the appraisal to be made?

Hon. Mr. DUNNING: Of course—

Mr. COLDWELL: I know in this committee naturally there are different points of view because of the different types of communities that the members represent. The problems are essentially different between the east and the west. The members from the west do not appreciate the point of view of the east, and the members from the east do not appreciate our point of view. But I think this can be said: if we take the findings of the various committees that have been established on the prairies to look into the value of farm lands on the basis of net returns from these lands, the appraisals will have to be much lower than anything that has been done in recent years.

Hon. Mr. DUNNING: Obviously, Mr. Coldwell, no one can concede the principle of making appraisals on the basis of net returns of land, say in Dr. Donnelly's constituency over the past seven or eight years, because net returns over that period would give no value.

Mr. COLDWELL: Right.

Hon. Mr. DUNNING: Therefore it is useless to speak of it on that basis.

Mr. COLDWELL: I have before me a bulletin which has been used and quoted. I examined it very very carefully. It is bulletin 64.

Hon. Mr. DUNNING: I am familiar with it.

Mr. COLDWELL: The particular basis in that bulletin is the experience of the years between 1910 and 1914, those five years, on the basis of No. 2 Northern at 77 cents; and on the farm we find that the values according to productivity returns are much lower than either the companies or the mortgagor has placed upon their loans in the past.

Hon. Mr. DUNNING: The weakness of that bulletin, of course, is that it estimates nothing produced on that farm but wheat.

Mr. COLDWELL: No; it gives returns of live stock and poultry and so forth. It is not a great deal, I think \$100 to \$150 a year.

Hon. Mr. DUNNING: It is a bulletin of the Department of Agriculture.

Mr. COLDWELL: Yes, the College of Agriculture.

Hon. Mr. DUNNING: Saskatoon?

Mr. COLDWELL: Farm Management Department, Saskatoon. And then, in a recent book by Professor Britnell who advised the Saskatoon government—I have it here—he says, that in spite of the adjustments that were made in 1936 and the years following that up to the end of 1938 the amount of debt there is as great as it was in 1936; which would go to show, I think, the adjustments that have been made, unless we are going to do something much more drastic, have not been sufficient according to him to meet the needs of the western agriculturist. I am very anxious to see on this board some representation other than that of the financial side or chosen by people who represent the financial side. That is, I suggest it might be better to have a representative appointed directly by the government itself.

Mr. DONNELLY: I refer to what has taken place in the province of Saskatchewan with regard to the appraising of land out there at the present time. I might say that last winter the government of the province of Saskatchewan selected some twelve or fifteen men from the different sections of the province and sent them to the University of Saskatoon for a six weeks or a two months course, training them in appraising land value. At the first of this month, or the last of last month, they put them out in the country and gave them a three-weeks or a two-weeks course on appraising land, and at the present time these men are going all over the province of Saskatchewan and are appraising land all over in every municipality.

Hon. Mr. DUNNING: For assessment purposes.

Mr. DONNELLY: For assessment purposes. This will be done much the same all over the province, so that we will have something to go by in our values of land when it comes to adjusting mortgages and assessing land for mortgage value. I can see that this will be of real value to us and we will get something, I think, that will be universally much the same all over the province. I know something, as Mr. Coldwell said, of the appraisals of land that have been made under our Farmers' Creditors Arrangement Act. The valuations have been so varied and we get such reports, which are so much at variance one with another, that in many cases their valuations have been of no account to us at all. They have been too high. I can say this with regard to my district. I know the Farmers' Creditors Arrangement Act has set values in the district of \$15 to \$20 per acre on land down there which you could buy practically anywhere for \$5 per acre at the present time. To set values of that kind is absurd. It is ridiculous, that is all.

Mr. TUCKER: In this case the farmer does not have to accept the appraisal. The company has to, so there is quite a difference there in the position in regard to it.

The CHAIRMAN: Shall paragraph (ii) carry?

Mr. THORSON: It seems to me it will be essential to provide for regulations further defining—

Hon. Mr. DUNNING: 31 does so provide.

Mr. THORSON:—further defining what is a fair appraised value, and then when we come to section 31 we may have to consider an amendment to it.

Hon. Mr. DUNNING: Amplifying that a bit.

Mr. THORSON: Yes, because there is unquestionably a tendency throughout Canada now towards uniformity in value of property. But the subject of the value is perhaps the hardest subject that there is to define. Rental return is becoming an increasing factor in determining the value, but it must not be the sole factor; it is only one of the factors that enters into the value, and the government may well lay down regulations in 31 defining the matters which shall be taken into consideration in arriving at fair appraisal value.

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. DUNNING: We have something to guide us in that respect in connection with the broad variety of conditions all over Canada. We have one or two organizations of a national character, who have now had some years of experience. I have in mind the Farm Loan Board which, of course, operates in every province, and the Soldier Settlement Board which through its somewhat checkered history has had a very great burden of grief in connection with appraisals. Now, we have there a background of possible regulation which could be made the guide, but I do submit, as Mr. Thorson recognizes, you cannot write into this what shall be the basis of appraisal; it is not possible.

Mr. WARD: I would like to ask the minister why he thinks it will be difficult to secure a debtor representation on this board? That seems to me to be a very important point. I appreciate that you have the right idea in looking to the appraisers now in the employ of the Canadian Farm Loan Board, and of the Soldier Settlement Board because they have some very good men, I know, in all the provinces, but I do think you must make provision either implied or otherwise to have debtor representation on this board.

Mr. MACDONALD: Never look a gift horse in the mouth.

Hon. Mr. DUNNING: In answer to Mr. Ward I would say this, that the Farmers' Creditors Arrangement Act involved the application of the bankruptcy principle, in fact it is enacted under our general powers with respect to bankruptcy; but instead of the debtor, as in ordinary bankruptcy law being represented, one person is appointed theoretically representing all debtors. I do not think anyone would say that in practice that is what has actually happened on the boards of review. I do not think that in practice one member acts more or less as counsel for all the debtors. He is supposed to be appointed with what might be called the debtor bias. I know that the previous government and our government has had in mind that desirability of having the debtor bias a factor in the judicial disposition of the case, but to try to visualize a scheme in which the individual debtor himself in all those hundreds of thousands of mortgages could have effective personal representation, is just beyond me; it is impossible. It is our duty to conserve the debtor's interests. After all, what do we want to do? In connection with agriculture we want to try to put the industry on an effective working basis. It can only be put on an effective working basis if the load is adjusted to the capacity to bear it. Now, I do not need to say that even if we do that, Mr. Ward, that you or any other representative of a farming constituency will be satisfied with the values. I never knew a debtor yet who was really satisfied that a write-down was sufficient, and I have had a lot of experience with the Farmers' Creditors Arrangement Act, and I fully expect you to come back to the House of Commons and say, "this is awful. So and so's farm was only written down so much, it ought to have been done differently." and I say Mr. Coldwell, that is a reason why I do not want the government going in and appointing anybody; I do not want any suggestion that there was a political aspect to this work of appraisal, and I know that would be charged if, as minister of finance, I was given the power to appoint one of the appraisers. I would prefer to see it worked out on the ability to bear the load.

Mr. COLDWELL: What about the farmers' organizations in regard to adjusting agricultural mortgages?

Hon. Mr. DUNNING: I cannot see that they are expert appraisers, Mr. Coldwell. I know them and they work well as individuals, but there again the bias would definitely be towards a constituency.

Mr. MACDONALD: The appraiser should be disinterested.

Hon. Mr. DUNNING: Yes, an appraiser should be disinterested.

Mr. ROSS: How many of those appraisers would there be?

Hon. Mr. DUNNING: That depends upon the extent to which the proviso in subsection 1 becomes operative. We have high hope that the volume of appraisals will be reduced materially.

Mr. MACDONALD: I asked a question a moment ago with regard to second mortgages. Since that time I have glanced through the Act and I cannot see where second mortgages are exempt from the provisions of this Act. If you turn to section 16 it says that each membership agreement shall include provisions to the following effect:—

(a) The member company shall adjust, as in this Act provided,

(i) All its mortgages on farms in Canada held at the date of the membership agreement;

And then it goes on to say, "all its mortgages on non-farm homes in Canada . . ." Now, I suppose every company has a great many second mortgages besides first mortgages. I do not think there is any doubt about that, that mortgage companies have second mortgages. If they have second mortgages, I say according to this Act, they come within the provisions of the Act.

Hon. Mr. DUNNING: I suppose if a member company holds a second mortgage on a property on which it also holds a first mortgage, and it is hard to conceive that—

Mr. MACDONALD: Not necessarily on the same property.

Hon. Mr. DUNNING: I would be very much surprised if any member company here would admit owning second mortgages on a property that someone else held the first mortgage on.

Mr. KINLEY: There are a lot of cases where the company holds the first mortgage and an individual has the second.

Hon. Mr. DUNNING: It is debarred.

The CHAIRMAN: Shall section 16 carry? (Carried).

Shall section 17 carry? (Carried).

Shall section 18 carry? The minister has an amendment.

Hon. Mr. DUNNING: There is an amendment consequent on what we have done; it is to sub-section 1 and is as follows:—

That section 18 of the bill be amended by striking out the words "in accordance with the provisions of paragraph (q) of section 16 of this Act" where they appear in sub-section 1, and substituting therefor, "in respect of amounts written off pursuant to the provisions of a membership agreement."

The CHAIRMAN: Shall section 18, paragraph 1, as amended carry? (Carried). Shall paragraph 2 carry?

Hon. Mr. DUNNING: This is the same amendment in exactly the same language.

The CHAIRMAN: Shall paragraph 2 as amended carry? (Carried).

Shall section 19 carry? (Carried).

Shall section 20 carry?

Hon. Mr. DUNNING: There is an amendment to section 20. This of course, is necessary to carry out what we did previously in regard to the control of interest rates for future lending taking place only with respect to moneys secured from the mortgage bank, and the whole of section 20, sub-section 1 is struck out, and the following is substituted. You will notice it follows the language of the former amendment:—

20. (1) The Central Mortgage Bank shall determine from time to time the maximum rate of interest which may be charged by a member [Mr. T. D'Arcy Leonard, K.C.]

company on mortgages on farms in Canada and non-farm homes in Canada, entered into after the date of the membership agreement, where the moneys used in making such mortgages are obtained through the Central Mortgage Bank or on renewals of mortgages adjusted pursuant to the provisions of any membership agreement and such rate shall take effect on publication in the *Canada Gazette*.

Mr. HILL: Will the minister set up some machinery so that some of this money used in the bank may be used in eastern Canada? It seems to me that if we meet that \$100 million loss and eastern Canada has to take up about 80 per cent of it that many of the farms that have no mortgages now will have to put mortgages on and others will have to increase them, and they will hope to get a low rate of interest on it.

Hon. Mr. DUNNING: I do not agree with your premises. I do believe that this Act will be effective in the Maritime Provinces, and I do believe there will be a degree of competition set up in the Maritime Provinces that will have a beneficial effect in as far as people requiring credit down there are concerned.

Mr. KINLEY: That is right.

Mr. COLDWELL: I was surprised in looking up the return to see the number of adjustments under the Farmers' Creditors Arrangement Act that had been made in the Maritime Provinces. In Prince Edward Island, for example, there were 1,116 applications and 1,076 adjustments concluded.

Hon. Mr. CAHAN: About two or three times the adjustments were made per capita as in any other province.

The CHAIRMAN: Shall the paragraph as amended carry? (Carried).

Shall paragraph 2 of section 20 carry?

Hon. Mr. CAHAN: There is a suggestion there: "Such maximum rate shall not exceed by more than 2 per centum per annum the average daily yield" etc. That rate is likely to be quite high some time in the near future, is it not?

Hon. Mr. DUNNING: I do not think so.

Hon. Mr. CAHAN: If we become involved in international difficulties I should expect to see that rate go up 50 per cent at least. There is no stability to that rate.

Hon. Mr. DUNNING: More stability than to any other that we could choose, Mr. Cahan.

The CHAIRMAN: Shall the paragraph carry? (Carried).

Paragraph 3 of section 20. Shall the paragraph carry? (Carried).

Shall the section carry? (Carried).

Section 21. Shall section 21 carry? (Carried).

Section 22.

Hon. Mr. DUNNING: This should be taken section by section.

The CHAIRMAN: Paragraph 1 of section 22 (a).

Hon. Mr. DUNNING: There is an amendment to (a):—

That paragraph (a) of subsection (1) of section 22 of the bill be amended by striking out the words "under the provisions of this Act" where they appear in lines 20 and 21 on page 11 and substituting therefor the words "pursuant to the provisions of the membership agreement."

The CHAIRMAN: Shall the paragraph as amended carry? (Carried).

Shall paragraph (b) of section 22 carry?

Hon. Mr. DUNNING: Paragraph (b) comes out entirely in accordance with what I said a little while ago that it was undesirable to have the power to purchase preferred shares.

Mr. MACDONALD: Under paragraph (a) the companies can hypothecate mortgages direct to the bank. I understood that was not so and the bank did not hold any mortgages.

Hon. Mr. DUNNING: They can hold them as security, of course: "Make loans to a member company upon the security of mortgages adjusted under the provisions of this Act, or eligible mortgages as defined in subsection 3 of this section." They can make loans upon that security, of course.

Mr. TUCKER: Eligible mortgages.

Mr. MACDONALD: We have a previous clause where advances could be made on debentures of the company, and I understood advances were limited to that. Apparently, I was incorrect, and advances can be made upon adjusted mortgages and other eligible mortgages which will be hypothecated to the bank.

Hon. Mr. DUNNING: Surely.

Mr. TUCKER: What is wrong with that?

Mr. MACDONALD: I have no objection to it.

Mr. THORSON: I would like to know as to whether the bank should not be given power to take mortgages generally as collateral security? It is confined in this section to taking certain kinds of mortgages as collateral security.

Hon. Mr. DUNNING: Eligible mortgages are described in sub-section 3.

Mr. THORSON: Why should the power to take mortgages as collateral security be restricted?

Hon. Mr. DUNNING: The reason I think was that for the present at least, until we have developed experience I would prefer to see the bank and member company relationship confined to the particular classes of mortgages dealt with by this legislation. If later it became desirable to undertake general mortgage refinancing then we can consider it. For the present we have concentrated on this one major aspect of the problem, the farm and the small non-farm home, and I would prefer not to widen it at the present time with respect to collateral of another character.

Mr. THORSON: Why should the bank be restricted in taking collateral? Should they not have the power given to them? Whether they exercise it or not, is another matter.

Mr. TUCKER: It has the power under sub-section (a). It may make loans. It does not say to what amount, but it may make loans to a member company upon the security of mortgages adjusted or eligible. In other words, a member company may have \$100,000 of mortgages and it may come to the Central Mortgage Bank and say, "I want to borrow on the strength of these mortgages \$25,000". The bank has that power.

Hon. Mr. DUNNING: Provided they are eligible mortgages or mortgages adjustable under this Act.

Mr. THORSON: It has power only to take its collateral in certain defined mortgages. I am suggesting that it should have wider powers of taking the collateral.

Hon. Mr. DUNNING: Of course, you understand, Mr. Thorson, that this power is tied up under (2) with the element of control, and that is another reason for confining the whole transaction to the classes of mortgages which it is thought to deal with. I think the point you have in mind could very well be

[Mr. T. D'Arcy Leonard, K.C.]

developed out of experience rather than providing for general mortgage refinancing at the present time. I prefer to keep out of that field.

Mr. THORSON: That may be; but I do not see why the bank, when it is advancing money, should have its powers of taking security restricted. It may desire more security than the adjustment mortgages or the eligible mortgages. Why should the power to take collateral be restricted? The bank may desire, as a matter of policy, not to take additional collateral and to confine itself to the adjustment mortgages or the eligible mortgages, but why should the power to take collateral be restricted?

Hon. Mr. DUNNING: Of course, I cannot visualize the kind of transaction you have in mind. I have in mind only financing eligible mortgages, adjust mortgages. Now, you are visualizing that in connection with such refinancing a mortgage company may come along with additional collateral of a class of mortgage not contemplated by the Act and it will deposit it as additional collateral. It is impossible for me to visualize such a situation.

Mr. THORSON: It might not be mortgages; it might be other collateral.

Hon. Mr. DUNNING: The bank itself is very satisfied with the breadth we have here.

Hon. Mr. CAHAN: That is a power held in reserve to be exercised when sufficient political pressure is placed upon the organization.

Hon. Mr. DUNNING: It will require an amendment to the law.

Hon. Mr. CAHAN: I say that is for political pressure.

Hon. Mr. DUNNING: What you say would be true if the power were there now.

Hon. Mr. CAHAN: I am suggesting that the necessary legislation would be obtained by applying proper pressure in the future.

The CHAIRMAN: Paragraph (b) is to be deleted. Does that carry? (Carried.)

Shall paragraph (c) carry?

Mr. Ross: What is the purpose: "Invest in securities or guaranteed by the Dominion of Canada"?

Hon. Mr. DUNNING: They may require a field for investment for funds temporarily. The mortgage bank with its capital of \$10 million and \$200 million debenture issue will have a certain—

The CHAIRMAN: Shall paragraph (d) carry?

Hon. Mr. CAHAN: How does (d) apply? Is that a new appraisal to be made, or does (d) apply to the appraisals which are made under the previous sections of this bill?

Hon. Mr. DUNNING: The appraisals that have been previously made.

Mr. MACDONALD: Which are to be adjusted. They could not be previously made if they are to be adjusted.

Mr. TUCKER: It seems to me an unnecessary section in connection with section 17.

Hon. Mr. CAHAN: It seems to me it might well be eliminated.

Hon. Mr. DUNNING: Section 17 dealt with the terms of the agreement; section 22 in effect gives the mortgage bank power to carry out its side of the agreement.

Mr. MACDONALD: It says that in section 22.

Hon. Mr. DUNNING: I think it is right that the last few words should be eliminated; they are quite unnecessary and confusing—the words, "and which are to be adjusted under this Act." That is the point you had in mind?

Hon. Mr. CAHAN: Yes.

Hon. Mr. DUNNING: "(d) make or cause to be made the appraisals of properties which are subject to mortgages held by member companies." Strike out the words: "and which are to be adjusted under this Act."

The CHAIRMAN: Shall paragraph (d) carry as amended? (Carried.)

Shall paragraph (e) carry? (Carried.)

Paragraph 2. Shall it carry? (Carried.)

Hon. Mr. CAHAN: That is peculiar in paragraph (e): "Carry on research with respect to the conduct of the business of lending money in respect of mortgages, and such other matters as it may deem desirable." What you really should have is power to carry on research with respect to the conduct of the business of lending money on the security of mortgages and such other matters as may be deemed desired in connection with the administration of this Act; or something of that kind.

Hon. Mr. DUNNING: I am not really very particular about this—the latter words in any case. I think if we stopped at "mortgages" it would be quite sufficient.

Hon. Mr. CAHAN: Yes.

Hon. Mr. DUNNING: I think we are all indebted to the work of the research department of the Bank of Canada. We know how useful it is. I move we amend (e) by striking out all the words after the word "mortgages" in the last line of the subsection.

The CHAIRMAN: Shall the subsection as amended carry? (Carried.)

Shall paragraph 3 carry?

Hon. Mr. DUNNING: There is an amendment here:—

That sub-paragraph (i) of paragraph (a) of subsection (3) of section 22 of the said bill be amended by striking out the word "charge" where it appears in line 4 on page 12 and substituting therefor the word "mortgage."

"Such mortgage shall constitute a first charge on farm lands. . . ."

Hon. Mr. CAHAN: I think if you took the opinion of your Justice Department you would find that "shall be a first charge" is the proper term.

Hon. Mr. DUNNING: That is what appeals to me, but this came from them.

Mr. THORSON: It may not. There may be provincial legislation which might make taxing, for example, a first charge. There may be other things that are made a first charge ahead of a first mortgage.

Mr. MACDONALD: If that is so, you will not get any eligible mortgages because in every province to-day taxing comes ahead of the mortgages.

Mr. THORSON: You describe them as a first mortgage, but there is a differentiation between a first mortgage and a first charge.

Hon. Mr. CAHAN: Very great indeed.

Hon. Mr. DUNNING: I think the amendment should go as it is; it is from the department.

Hon. Mr. CAHAN: I am not pressing it; but I do not agree with the Justice Department as to that.

The CHAIRMAN: Shall paragraph (ii) carry? (Carried.)

Shall paragraph (iii) carry?

Hon. Mr. DUNNING: There is an amendment:—

[Mr. T. D'Arcy Leonard, K.C.]

That sub-paragraph (iii) of paragraph (a) of sub-section (3) of section 22 of the said bill be amended by inserting after the word "shall" in line 16 on page 12 the following words "from the time the loan is made".

It will then read: "Such mortgage shall from the time the loan is made bear interest at a rate..."

The CHAIRMAN: Shall the paragraph as amended carry? (Carried.)

Paragraph (iv); shall it carry? (Carried.)

Paragraph (v); shall it carry?

Mr. MACDONALD: That is pretty wide.

Hon. Mr. DUNNING: In paragraph (b) of sub-section 3 of section 22, there is the same change as before by striking out the word "charge" in line 38, and substituting the word "mortgage". "Such mortgage shall constitute a first mortgage on a non-farm home..."

Hon. Mr. CAHAN: I understand that Mr. Thorson holds the view that taxes may be a first charge.

Mr. THORSON: There may be municipal liens.

Hon. Mr. CAHAN: Yes; but are we to deal with this on the assumption that from time to time a provincial authority or municipal authority may impose charges which are the first charge, that is the prior charge to that of the mortgage?

Hon. Mr. DUNNING: That has been a thorny problem in nearly every province.

Hon. Mr. CAHAN: Of course, there are grave difficulties when you wish to intervene in matters which are subject to provincial authority, and that raises some very grave questions. I am not pressing it.

The CHAIRMAN: Shall the paragraph as amended carry? (Carried.)

Shall paragraph (ii) of (b) carry?

Hon. Mr. DUNNING: (b) has the same amendment as previously: Insert after the word "shall" in the forty-eighth line the following words: "From the time the loan is made". It will then read: "Such mortgage shall from the time the loan is made..."

The CHAIRMAN: Shall (iii) (b) carry? (Carried.)

Shall (iv) (b) carry? (Carried.)

Shall section 23 carry? (Carried.)

Shall section 24 carry?

Hon. Mr. CAHAN: Should there not be some provision in this bill, Mr. Dunning, which will protect the dominion interest, that is the Central Mortgage Bank interest against adverse legislation of the provinces and the municipalities? As it is you are providing a large sum of money estimated by way of suggestion by you at \$45,000,000 or \$50,000,000. It is such a large amount of money to enable the provinces and municipalities to nibble at at your expense.

Hon. Mr. DUNNING: It is a very difficult question as to how far. The provision we have already made with respect to the provinces enacting such legislation is to enable this bill to function. How far we can get them to go with respect to that point, which has been the most difficult point in connection with mortgage loaning for many years,—that is, the creation by provincial enactment of charges which are stated to be taxes. For instance, the hospital tax in Saskatchewan, the rural telephone tax, and a number of those; and the objection of the mortgage interests always has been to the creation of a first charge of something which is not really a tax in the old sense of the word, but is

made a tax by the competent authority, the provincial legislature, and hence it has come from that time forward in advance of the first mortgages. We have had the problem in the west for many years in respect to the seed grain lien. I think in that case the making of seed grain liens a first charge was certainly justified because of the nature of the advance; but I am afraid I cannot see any way of getting them to agree to surrender any right they may have on their property and civil rights in that regard. It is a very thorny problem, as you know.

Hon. Mr. CAHAN: Of course, when a company, which, before it becomes a member company, is dealing with it, it can include in the terms of the mortgage provision which would enable it to enforce the mortgage in case these encumbrances or liens are placed upon the property even by the municipality.

Hon. Mr. DUNNING: I think you will find that the provincial mortgage law would not permit such a contract.

Hon. Mr. CAHAN: Ah, well, that is possible, but as to whether that law would be valid or not, I do not know. But I am not entering into this. Here you are providing that a member company must make these loans for twenty years or for such limited term as may be approved by the Central Mortgage Bank; and if it has made this loan for a term of twenty years or fifteen years, then, after this it is fixed, it allows the provincial or municipal authorities to nibble at these rates without any redress whatever by the member company, that is a very serious condition.

Mr. KINLEY: Can you not make failure to pay provincial obligations bring finality to the mortgage, and say, if you do not pay all taxes we will collect the money.

Hon. Mr. DUNNING: That is a different point, of course.

Mr. KINLEY: The provinces have priority in certain things like taxes and compensation. You make an agreement for a twenty year mortgage; if a man does not fulfil his obligations on his provincial taxes, bring the mortgage to a conclusion as a result of that.

Mr. MACDONALD: That term is in every mortgage.

Mr. TUCKER: It is in every mortgage existing now.

Hon. Mr. DUNNING: Every mortgage issued by a member company contains that provision today.

The CHAIRMAN: Shall section 24 carry? (Carried).

On section 25. (Carried).

On section 26. (Carried).

On section 27. (Carried).

On section 28. (Carried).

On section 29. (Carried).

On section 30. (Carried).

Now, it is 6 o'clock. Shall we adjourn until tomorrow morning at 11.15?

Hon. Mr. DUNNING: Before we take up section 31, I want to give consideration overnight to the amplification of some of the proposals for making regulations, and it is understood that 16 will be in complete form tomorrow morning and mimeographed with the changes.

Mr. MACDONALD: For reconsideration?

[Mr. T. D'Arcy Leonard, K.C.]

Hon. Mr. DUNNING: No, not reconsideration, Mr. Macdonald.

Mr. THORSON: I suggest you take into consideration an amendment to 31 dealing with the subject of valuations.

Hon. Mr. DUNNING: Yes, we are going to work on that.

Mr. THORSON: Yes, and also defining the member companies. I had that in mind when we discussed appraisals. I do not remember exactly the details of it, but I have a note that member companies may be defined.

Hon. Mr. DUNNING: We will have that in mind and see what we can do with it.

The committee adjourned at 6 p.m. to meet to-morrow, June 1, at 11.15 a.m.

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Standing Committee, 1939

SESSION 1939

HOUSE OF COMMONS

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

BILL 132

AN ACT TO INCORPORATE THE
CENTRAL MORTGAGE BANK

No. 4

THURSDAY, JUNE 1, 1939

WITNESS:

Mr. T. D'Arcy Leonard, K.C., General Counsel for The Dominion
Mortgage and Investments Association, Toronto



OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1939

REPORT TO THE HOUSE

SEVENTH REPORT

JUNE 1, 1939.

The Standing Committee on Banking and Commerce begs leave to present the following as its

SEVENTH REPORT

Your Committee has considered Bill No. 132, An Act to Incorporate the Central Mortgage Bank and has agreed to report the same with amendments.

A copy of the evidence taken is attached.

All of which is respectfully submitted.

W. H. MOORE,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 1, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Cahan, Clark (*York-Sunbury*), Cleaver, Coldwell, Deachman, Donnelly, Dubuc, Dunning, Fontaine, Hill, Howard, Hushion, Jaques, Kirk, Lacroix (*Beauce*), Moore, Perley (*Qu'Appelle*), Ross (*St. Paul's*), Stevens, Thorson, Ward, White, Taylor (*Nanaimo*).

In attendance: Dr. W. C. Clark, Deputy Minister of Finance; Mr. D. M. Johnson, Solicitor to the Treasury; Mr. T. D. Leonard, K.C., counsel for the Dominion Mortgage and Investments Association, and representatives of various Loan, Mortgage, Trust and Insurance Companies.

The Committee resumed consideration of Bill 132, An Act to incorporate the Central Mortgage Bank.

Section 31.—Moved by Mr. Dunning that paragraph (a) subsection (1) be amended by adding to the list of expressions to be defined the following:—

(x) "single family home"

(xl) "two-family home"

Amendment carried and section 31 as amended,—Carried.

Section 32,—Carried.

Schedule,—Carried.

The Committee reverted to the consideration of section 16.

By unanimous consent a redrafted copy of section 16 was submitted for consideration, incorporating the amendments previously adopted as well as a few minor amendments submitted by the Department of Justice for clarification purposes.

On motion of Mr. Dunning,

Resolved,—That paragraph (S) of subsection (1) of section 16 be amended by adding thereto the following:—

and provided further that in the case of any mortgage acquired by the member company from a holder thereof after the first day of May, 1939, the member company shall not receive debentures in excess of fifty per centum of the amount whereby the cost actually incurred by the member company in acquiring the mortgage exceeds eighty per centum of the fair value of the property appraised as provided in this Act.

On motion of Mr. Dunning,

Resolved,—That paragraph (k) of subsection (1) of Section 16 be amended by adding thereto the following proviso:—

provided however, that the member company shall not be obliged to charge a rate of interest less than an effective rate of five and one-half per centum per annum on renewals of mortgages on non-farm homes in Canada adjusted pursuant to the provisions of the membership agreement.

Section 16, as amended,—Carried.

On motion of Mr. Dunning,

Resolved,—That subsection (1) of Section 20 be amended by adding thereto the following words:—

provided however, that a member company shall not be obliged to charge a rate of interest less than an effective rate of five and one-half per centum per annum on renewals of mortgages on non-farm homes in Canada adjusted pursuant to the provisions of the membership agreement.

Section 20 as further amended,—Carried.

The Committee then considered paragraph (g) and (i) of section 2, which had been left standing. The two said paragraphs were adopted.

During the course of proceedings Mr. Leonard was recalled and briefly examined.

Title carried.

Preamble carried.

Ordered,—That the Bill as amended, be reprinted and that the Chairman report same to the House.

The Committee adjourned at 12.15 p.m. to resume consideration of the Report of the Bank of Canada.

A. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

June 1, 1939.

The Standing Committee on Banking and Commerce met at 11.15 a.m. The chairman, Mr. W. H. Moore, presided.

The CHAIRMAN: Order, gentlemen. Mr. Hill has a statement to make.

MR. HILL: Mr. Chairman, I rise on a question of privilege. There was a statement made just at the close of yesterday's proceedings having regard to the benefit that the maritime provinces obtain under the Farmers' Creditors Arrangement Act. Now, I shall quote from the remarks of Mr. Coldwell:—

MR. COLDWELL: I was surprised in looking up the returns to see the number of adjustments under the Farmers' Creditors Arrangement Act that had been made in the maritime provinces. In Prince Edward Island, for example, there were 1,116 applications and 1,076 adjustments concluded.

HON. MR. CAHAN: About two or three times the adjustments were made per capita as in any other province.

That is correct as far as Prince Edward Island is concerned, but Prince Edward Island is not the maritime provinces.

HON. MR. CAHAN: I was speaking of Prince Edward Island.

MR. HILL: Yes, I know, but the inference is that the maritime provinces benefit more from the provisions of the Farmers' Creditors Arrangement Act than any of the other provinces. Now, I am going to place on record some figures, and these figures are accurate. I know that Mr. Coldwell would not like to place on the record anything that is inaccurate, and I also know that Mr. Cahan would not like to do so. I remember that the minister of finance, who represents a maritime province constituency, nodded to Mr. Coldwell, and I know he would not like to leave the impression that he felt this was correct if it was inaccurate.

HON. MR. DUNNING: I think my friend misunderstood my nod. I certainly was not endorsing all that Mr. Coldwell said on that occasion.

MR. HILL: The information I am going to place on record is information compiled from the annual report "Farmers' Creditors Arrangement Act," March 31, 1938, pages 12-13, and the population is taken from page 91 of the census of 1931, volume 2. Now, the cases per thousand of population are as follows:—

Prince Edward Island	12.2	} 2.1
Nova Scotia	0.3	
New Brunswick	2.3	
Quebec	1.8	} 1.8
Ontario	2.2	
Manitoba	4.5	} 4.47
Saskatchewan	5.0	
Alberta	4.5	
British Columbia	0.8	} 0.8

Now, with regard to the total amounts of money adjusted per thousand of population, the maritime provinces are the lowest in the country, and I shall give the list as I have it here.

TOTAL AMOUNT PER THOUSAND POPULATION

Prince Edward Island	\$ 36·	} 5·30
Nova Scotia	1·6	
New Brunswick	3·9	
Quebec	7·0	7·0
Ontario	10·0	10·0
Manitoba	32·0	32·0
Saskatchewan	47·0	47·0
Alberta	40·0	40·0
British Columbia	5·0	5·0

Now, the amount of benefit which the maritime provinces obtained per capita, which was the question raised, is as follows. The three maritime provinces had a cut-down in their loans amounting to a total reduction for the three provinces of 1·48 per head, the second lowest in the dominion. Quebec was only 1·09; Ontario 2·73; British Columbia, 1·84; Manitoba, 13·52; Alberta, 15·10 and Saskatchewan 15·76. That is Mr. Coldwell's province. In other words, the three prairie provinces have an average cut-down per capita of 15·00 per head of population, or ten times as much as the maritime provinces. I should like to place these figures upon the record and then they can be checked to see whether they are accurate.

Page 91, Census 1931, Volume I

Province	No. of cases	Total amount	Total reduction	Average reduction per case	Per cent reduction per case	Per capita reduction	Average per capita
P. E. I.	1,076	\$ 2,985,036	\$ 734,476	\$ 682	\$1 33	\$ 8 35	\$ 1 48
N. S.	148	798,378	272,194	1,839	3 6	0 53	
N. B.	939	1,576,993	479,434	510	1 0	1 17	
Quebec	5,094	19,230,642	3,122,765	613	1 2	1 09	1 09
Ontario	7,372	34,960,614	9,268,482	1,257	2 5	2 73	2 73
Manitoba	3,157	22,380,814	9,463,273	2,997	6 0	13 52	15 00
Sask.	4,659	43,243,842	14,533,477	3,119	6 2	15 76	
Alberta	3,297	29,505,360	11,040,504	3,348	6 7	15 10	
B. C.	623	3,629,682	1,274,901	2,046	4 0	1 84	1 84

Information Compiled from Annual Report "Farmers' Creditors Arrangement Act," March 31, 1938, Pages 12-13

Population		Population	
Prince Edward Island	88,038	Manitoba	700,139
Nova Scotia	512,846	Saskatchewan	921,785
New Brunswick	408,219	Alberta	731,605
Quebec	2,872,078	British Columbia	694,263
Ontario	3,431,683		

Hon. Mr. CAHAN: What was the per capita for the province of Prince Edward Island?

Mr. HILL: It was 8·35 as against 15·76 in Saskatchewan, and 15·10 in Alberta.

The CHAIRMAN: Let us proceed to section 31.

Hon. Mr. DUNNING: With regard to section 31, paragraph (a) of sub-section 1, Mr. Chairman, I have an amendment adding (x) "single family home"; and (xi) "two-family home." Those are added as (x) and (xi) under (a). That will be necessary because of the change in regard to two-family homes and single family homes.

The CHAIRMAN: Should we not go through this section by section? Shall we carry paragraph (a) as amended?

(Carried).

Shall we carry paragraph (b)?

(Carried).

Shall we carry paragraph (c)?

(Carried).

Shall we carry paragraph (d)?

Mr. THORSON: Yesterday I suggested—

The CHAIRMAN: Are we on (d)?

Mr. THORSON: Yes. Yesterday I suggested that power should be taken to define by regulation such expressions as "value" and "appraisal value." I have been giving a good deal of thought to that since then, and I think, perhaps, it might be safer to leave it as it stands by reason of the difficulty of giving a statutory definition to the term "value" or "fair appraisal value"; so I withdraw the suggestion I made yesterday.

The CHAIRMAN: Shall paragraph (d) carry?

(Carried).

Shall paragraph 2 of section 31 carry?

(Carried).

Shall the section carry?

(Carried).

Shall section 32 carry?

(Carried).

Now, we had certain sections that were allowed to stand.

Hon. Mr. DUNNING: There is the schedule.

The CHAIRMAN: Shall the schedule carry?

(Carried).

Paragraphs (g) and (i) of clause 2 were allowed to stand.

Hon. Mr. DUNNING: These have been considered again by the Department of Justice in the light of the discussion which took place, and the best advice I can get in that regard is that no change is necessary whatever, having regard to the run of the Act. The Department of Justice says that it quite evident that the mortgage meant in the Act and followed up through the Act is the kind of mortgage which this bill deals with and no other.

Mr. THORSON: And you define it further.

Hon. Mr. DUNNING: Yes.

Hon. Mr. CAHAN: What are you referring to?

Hon. Mr. DUNNING: To clause (i).

Hon. Mr. CAHAN: I was discussing that. I was quite willing to have it "mortgage," but when you began to amend it —

Hon. Mr. STEVENS: My point in regard to that was that agreement of sale should not be included in this definition of mortgage here, and you take the power in section 31 to define what agreement of sale is. But is it wise to identify an agreement of sale as a mortgage? That is the point I raised and I still think it is a mistake.

Hon. Mr. CAHAN: It might or might not be a mortgage.

Hon. Mr. STEVENS: Quite so; but generally speaking it is not a mortgage.

Mr. TAYLOR: Is it not closed out in exactly the same way as a mortgage?

Hon. Mr. STEVENS: No.

Dr. CLARK: The companies that will be member companies will hold agreements of sale which I think you want to have adjusted just as you have the mortgages they hold adjusted. In the operative sections of the Act, wherever "mortgage" appears it is a mortgage on farms in Canada or non-farm homes in Canada, and the idea was to make it clear in this interpretation section that "mortgage" whenever it is used will include a hypothec or an agreement for sale which, presumably, you want to have adjusted as well as mortgages.

Hon. Mr. STEVENS: I am approaching it from another standpoint which I think is not presently in the mind of the drafters of the bill. What I am afraid of is that as the bank operates we may bring in a lot of these agreements of sale which are little more than a racket in some of our western sections. I know about them. They have been coming on for years. I am not worrying about the standard mortgage companies because their agreements for sale will largely be for foreclosed mortgaged properties, but I am thinking of some of those land companies or some companies that may call themselves mortgage companies that are largely land companies selling land on a purely speculative basis, and you have a lot of agreements of sale outstanding worth hundreds of thousands of dollars.

Dr. CLARK: The land corporations are out under the bill.

Hon. Mr. STEVENS: They may call themselves mortgage companies and may be carrying on a mortgage business, but in addition to that, these provincial companies carry on a land selling business. However, I have drawn the matter to your attention and I think it is a wise safeguard.

Hon. Mr. DUNNING: That will have to be safeguarded administratively, but how we can get a definition which will admit the kind of agreement of sale which must be admitted in order to make this Act work and at the same time exclude the kind of agreement for sale which I agree entirely with Mr. Stevens must be excluded is very difficult to put into the Act.

Hon. Mr. CAHAN: If you leave out "agreement for sale"—

Hon. Mr. STEVENS: If a mortgage company forecloses on a piece of property then they may sell instead of taking a new mortgage on it.

Mr. THORSON: That is no doubt what is contemplated.

Hon. Mr. STEVENS: Quite so. However, I think Mr. Chairman, that as in some other previous points such as valuations, we will have to trust to the administration of the law when it is law.

Mr. THORSON: Is that not meant also by section 31 with its power to define mortgages and agreements of sale?

Hon. Mr. STEVENS: If they define it properly.

The CHAIRMAN: Shall the section carry?

Hon. Mr. DUNNING: There is no other one standing, is there?

Hon. Mr. STEVENS: (g) stood.

The CHAIRMAN: (i) and (g) stood.

Mr. THORSON: Is the power to define member companies sufficiently defined there?

Hon. Mr. DUNNING: That raises again the question we discussed yesterday, whether we could in any way bring land companies within the ambit of this legislation. Frankly, I have not found a way that would be satisfactory, and I do not think it would be wise to give to the government power to bring in land companies.

Mr. THORSON: In connection with the negotiations that will take place between the government and companies who may possibly become member companies, without extending the term "member companies" as in the definition section, it might be well to take power under 31 to define what is a member company. You have taken power to define what is a mortgage and what is an agreement for sale and a number of other items.

Hon. Mr. DUNNING: Well, Mr. Thorson, that would mean giving to the government power to expand the definition of member companies contained in (g). That is, to me, quite a difficulty.

Hon. Mr. STEVENS: You always expand your power after you have had some experience.

Hon. Mr. DUNNING: Yes, I think it ought to be a matter of later development.

Hon. Mr. STEVENS: Give us a year.

Hon. Mr. DUNNING: I see so much difficulty surrounding that question that I cannot make a practical suggestion as to how to meet it at present, while recognizing that good work remains to be done.

The CHAIRMAN: Shall (g) carry?

(Carried).

Shall the section carry?

(Carried).

Hon. Mr. DUNNING: Now we turn to section 16, the mimeographed copy of which is before each member of the committee at the moment.

Mr. THORSON: There have been no substantial changes made in this?

Hon. Mr. DUNNING: The changes underlined are the ones which I indicated were suggested by the justice department, changes in verbiage altogether, and apart from that it is the same as yesterday.

Mr. THORSON: And the justice department amendments are the only ones that are underlined?

Hon. Mr. DUNNING: Yes.

The CHAIRMAN: Do you desire to go over it clause by clause?

Hon. Mr. STEVENS: The clauses are before us.

The CHAIRMAN: Shall the section as amended carry?

Hon. Mr. DUNNING: I thought the committee would probably want to discuss it. I have another point which I thought worthy of consideration. It arose out of a discussion yesterday when some member of the committee—I have forgotten who—spoke of member companies acquiring mortgages. It caused us to explore that field a little further, and I think it well to suggest to the committee a measure of protection there in the following form. It would be an addition to (s) of subsection 1 of this section on page 5 of the mimeographed sheet.

If the committee will follow me they will get the drift of the idea immediately:—

and provided further that in the case of any mortgage acquired by the member company from a holder thereof after the first day of May, 1939, the member company shall not receive debentures in excess of 50 per centum of the amount whereby the cost actually incurred by the member company in acquiring the mortgage exceeds 80 per cent of the fair value of the property appraised as provided in this Act.

The object of that is to head off any possibility of the buying up of mortgages at considerably less than face value and then putting in those mortgages by way of a claim under the provisions of the adjustment features of the Act. The control element is that they shall not receive debentures in excess of 50 per cent of the amount whereby the cost actually incurred by them—

Mr. THORSON: Yes.

Hon. Mr. STEVENS: In purchasing mortgages.

Hon. Mr. DUNNING: Yes. Whereby the cost actually incurred by the member company exceeds 80 per cent. It seems to me that is a very necessary protection against possible abuse.

Hon. Mr. STEVENS: Racketeering.

Hon. Mr. DUNNING: Yes. I think it is clear and to the point. The committee can see the implications.

Hon. Mr. STEVENS: Carried.

The CHAIRMAN: Carried.

Shall the sections as amended carry?

Hon. Mr. DUNNING: I understand that Mr. Leonard has a suggestion to offer.

Mr. P. D'ARCY LEONARD, recalled.

The WITNESS: Mr. Chairman, with the permission of the committee, I should like to raise a question for the consideration of the legal advisers of the committee on this section. It is a matter of draftsmanship. You will notice that section 16 (1) (a) starts out by specifying the classes of mortgages that the companies are to adjust. First of all it deals with all mortgages on farms, but in the case of its mortgages on non-farm homes the adjustments are confined to those under \$7,000, and under \$12,000 in the case of two-family homes.

But then going on with paragraphs (b), (c), (d), (f) and (i), the phraseology used is "each mortgage held by the member company."

Hon. Mr. DUNNING: Yes.

The WITNESS: I raise the question as to whether that should not be "Each such mortgage," so as to make it quite clear that the intention of the legislation is to refer only to those mortgages specified in paragraph (a).

Hon. Mr. DUNNING: I think that will require amending in several places.

The WITNESS: In the phraseology, yes.

Hon. Mr. DUNNING: The point is obvious, I think. Can we agree that counsel will make that change?

The CHAIRMAN: Mr. Leonard, have you a notation of your changes?

The WITNESS: I think if it is left the way Mr. Dunning mentions, it will cover the matter.

The CHAIRMAN: Shall the section carry?

Hon. Mr. CAHAN: Is it intended to make it "Such mortgage" throughout?

Hon. Mr. DUNNING: Throughout.

The CHAIRMAN: Shall the section as amended carry?

Hon. Mr. STEVENS: Carried. And the bill be reprinted.

The CHAIRMAN: Have you any other points to raise, Mr. Leonard?

The WITNESS: Mr. Chairman, I should like to raise a question with respect to paragraph (k), section 16, which carries with it also the same point in connection with the amendment made yesterday by the committee to sub-section 1 of section 20.

I pointed out to the committee yesterday the difficulties with respect to urban mortgages, and after consideration of a suggestion raised in the committee of a 5½ per cent rate on urban mortgages I indicated to the committee that such a change would go a long way towards removing the difficulties of the companies with respect to urban mortgages. In amending the bill accordingly with respect to the interest rate on urban mortgages it seemed to me that the committee intended that, in so far as the existing mortgages were concerned, the point raised was conceded that the rate on urban mortgages would be 5½ per cent until those mortgages were paid off subject to the right of the debtor and the company to agree as to other terms apart from the interest rate.

In the amendment to (k) it will be noticed that the control on the future interest rates where a company borrows from the Central Mortgage Bank is made applicable also to renewals of existing mortgages. And that same result carries through in the amendment made to section 20, sub-section 1, the result of which will be that in the case of urban mortgages having, we will say, a few months or a year or two years to run, the immediate reduction is to 5½ per cent. But upon the maturity of that mortgage the rate prescribed by the Central Mortgage Bank comes into effect, and assuming for example that current rates

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of Dominion of Canada bonds continue, and therefore a 5 per cent rate would be about the rate of interest on the mortgages, the present urban mortgages would continue at $5\frac{1}{2}$ per cent until the date of maturity and thereafter would automatically be at 5 per cent.

That does not meet the situation that I outlined to the committee yesterday. I suggest for the consideration of the committee, without repeating all the difficulties that I have outlined in respect of urban mortgages, that paragraph (k) and sub-section 1 of section 20 should be amended to conform with what I gathered was the wish of the committee in meeting the points I had raised so that the rate of interest with respect to the adjustment of existing mortgages on non-farm homes, that is, urban mortgages, should be $5\frac{1}{2}$ per cent or the rate of the Central Mortgage Bank, whichever is the higher rate.

Hon. Mr. STEVENS: That is what we intended.

Hon. Mr. DUNNING: I do not know what the committee intended, but let us see if I have it right. A mortgage is adjusted this year under the terms of the bill. Being an urban mortgage the effective rate on it is reduced to $5\frac{1}{2}$ per cent. Two years from now that mortgage matures and is renewed. If the effective rate published by the bank in accordance with the terms of the law at that time was less than $5\frac{1}{2}$ per cent, what Mr. Leonard is asking is that such renewal should not be made at less than $5\frac{1}{2}$ per cent.

Hon. Mr. STEVENS: Less than 5 per cent, say.

Hon. Mr. DUNNING: Well, 5 or $5\frac{1}{2}$ per cent, depending upon which class of mortgage was involved. That is your point, Mr. Leonard?

The WITNESS: That is correct.

Hon. Mr. DUNNING: But you are suggesting that clarification be made in this with respect to urban mortgages?

The WITNESS: That is correct, in connection with the farm mortgage situation. My whole submission is based on the recognition of a special condition there.

Hon. Mr. DUNNING: I should like to hear discussion on it.

Mr. COLDWELL: As I understand some of the objections from other parts of Canada, the maritimes, for example, one of the objections is that it may increase the rate over what is now the rate in many of the mortgages in that part of the country. I have heard that statement made.

Hon. Mr. DUNNING: It is simply impossible. I cannot conceive of that as a possibility.

Mr. COLDWELL: I do not wish to quote individuals unless they care to speak for themselves, but I was told yesterday that mortgages that were at 5 per cent in the maritime provinces on homes—

Hon. Mr. DUNNING: How can this bill increase the rate?

Mr. COLDWELL: If a member company had mortgages that were at $5\frac{1}{2}$ per cent, we will say, at the present time, and the rate published by the Bank of Canada happened to be $3\frac{3}{4}$ per cent, that would raise it $\frac{1}{4}$ per cent to $5\frac{3}{4}$ per cent. That would be the rate on the mortgage then, which ever is the higher.

Mr. THORSON: You are setting a maximum.

Hon. Mr. DUNNING: The maximum would be $5\frac{1}{2}$ per cent, I judge.

The WITNESS: Our point is this, with respect to the urban mortgages there are a great many that are being brought in here, a very large proportion of them—

The CHAIRMAN: You mean the non-farm mortgages?

The WITNESS: Yes.

The CHAIRMAN: That applies to rural houses.

The WITNESS: The definition has not yet been made. I assume that may be the case.

The CHAIRMAN: Not necessarily urban, no. Suburban.

Hon. Mr. STEVENS: Non-farm.

The CHAIRMAN: Non-farm. I think that distinction should be made clearly.

The WITNESS: In dealing with non-farm homes this bill brings in a great many mortgages that are in good standing and on which ordinarily there is no adjustment required except the matter of the interest rate in so far as this bill is concerned. And in being able to bring those mortgages in by reason of the $5\frac{1}{2}$ per cent interest rate it was considered by the member companies that that would apply to mortgages during the lifetime of the mortgages, unless the borrowers elected to stand by the terms of the contract to maturity and were able at that time to get them from the company or else a lower rate of interest. The point of difficulty is the very definite option now guaranteed, a right guaranteed to the debtor in respect of all those mortgages above $5\frac{1}{2}$ per cent that are brought down to $5\frac{1}{2}$ per cent by this bill; that not only has he that right but also the right to renew at the expiration of the mortgage at 5 per cent assuming that current interest rates continue. It comes back probably to the point that the spread of 2 per cent maximum under section 20 is not an economic spread in many parts of Canada wherever it is that you provide spreads, and the point is not important; but there are many places where it is important, and we are once again back to the position where difficulties are created for companies by reason of that feature.

Hon. Mr. DUNNING: Let me see if I have got it straight. You do not want anything put in this bill which would enable you to renew a mortgage for a higher rate than $5\frac{1}{2}$ per cent in the case of non-farm homes?

The WITNESS: Unless the bank rate is up.

Hon. Mr. DUNNING: You are willing to have a $5\frac{1}{2}$ per cent ceiling, but you do not want to be forced to reduce below that in case of renewals?

Mr. THORSON: That is the point.

By Hon. Mr. Dunning:

Q. Is that right?—A. I do not want to be forced below the $5\frac{1}{2}$ per cent rate where that is not the proper rate in ordinary dealing between the company and the borrower on that point.

Q. You have this much in your favour, you are not using public money at all in these transactions?—A. The cases that I am dealing with, Mr. Dunning, are those that come under the 80 per cent of value, where the reduction is purely on interest rate, no contribution by the dominion government to these adjustments. In the other cases, where the appraisal comes into it and where the question of arrears of interest comes into it, that adjustment involves a new agreement where the whole terms of the repayment will be set up and probably the complete amount of the mortgage amortized right through the term. But as I pointed out yesterday, with respect to all the good mortgages, the run of mine mortgages, all that the bill contemplates is really a reduction in the interest rate on which the company is making a contribution, without any contribution from the dominion government, and as to those, where the reduction brings it down to $5\frac{1}{2}$ per cent, it should be $5\frac{1}{2}$ per cent and not an obligation to us that we have got to give 5 per cent say three months from now on a rate that we have brought down from 6 per cent or $6\frac{1}{2}$ per cent to 5 and $5\frac{1}{2}$ per cent to date.

Mr. THORSON: What is the amendment you have?

By Mr. Coldwell:

Q. Under your proposal $5\frac{1}{2}$ per cent would not necessarily be the ceiling, as the Minister of Finance puts it. If the effective rate on government bonds

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went to $3\frac{3}{4}$ per cent and you were allowed an additional 2 per cent, that would give you a rate of $5\frac{3}{4}$ per cent on renewals outside of this particular adjustment?—A. You are correct, Mr. Coldwell.

Hon. Mr. STEVENS: That is liable to happen if he comes down to 5 per cent.

The WITNESS: May I say one word with regard to Mr. Coldwell's suggestion? It is just possible, of course, at the outset the borrower will say, I will take the assured $5\frac{1}{2}$ per cent and arrange accordingly.

Mr. THORSON: What is your draft? You had a draft there.

The WITNESS: No, I had no draft. I think I can suggest one for the members.

Mr. DONNELLY: This fixes a minimum rate. Suppose government bonds were to be reduced in the next couple of years down to 2 per cent, you still could charge $5\frac{1}{2}$ per cent?

The WITNESS: This is only dealing with the non—

Hon. Mr. DUNNING: Renewals.

Mr. DONNELLY: I know, but still it gives them the privilege to charge $5\frac{1}{2}$ per cent even if government bonds come down to 2 per cent.

The WITNESS: On the existing non-farm—

Hon. Mr. DUNNING: Will the committee let me read a suggestion to cover the point, if the committee wishes to deal with it? This would come at the end of (k):—

Provided, however, that the member company shall not be obliged to charge a rate of interest less than an effective rate of five and a half per centum per annum on renewals of mortgages on non-farm homes in Canada adjusted pursuant to the provisions of the membership agreement.

It seemed to be the view of some members of the committee that that is what they intended doing yesterday.

Hon. Mr. STEVENS: No doubt about it.

Hon. Mr. CAHAN: That last words were: "non-farm homes in Canada pursuant . . ."

Hon. Mr. DUNNING: "Adjusted pursuant . . ." Is there any objection?

Mr. THORSON: I think that is what was intended.

Mr. HOWARD: Where does that come into the bill?

Hon. Mr. DUNNING: An addition to (k) on page 3 of the mimeographed copy of clause 16.

Mr. COLDWELL: I do not think it is wise.

Hon. Mr. STEVENS: All it does is simply give the urban mortgages a differential of one-half of 1 per cent. We agreed to that yesterday.

Mr. THORSON: Yes, in principle, and this is confined to renewals of mortgages adjusted pursuant to the terms of the agreement. Mr. Leonard, does that draft meet the point that you have in mind?

The WITNESS: I think it does. I think the same amendment ought to—

Mr. THORSON: Do you think Mr. Chairman, it is necessary to put a similar proviso in 20?

Hon. Mr. STEVENS: No, I do not think so.

Hon. Mr. DUNNING: Let the lawyers look at it a moment. I do not think myself there is any necessity to put it in 20.

Mr. THORSON: Full power is given in 20 as it is.

Mr. KIRK: You have been talking about farm and non-farm homes. What about the fishermen's homes in a village?

Hon. Mr. DUNNING: A non-farm home. Are you satisfied?

Mr. JOHNSON: It is necessary to put a similar provision in 20.

Hon. Mr. DUNNING: The legal advisors say that for clarity it is necessary to insert a similar proviso in 20.

Hon. Mr. CAHAN: It will avoid disputes and difficulties in the future.

The CHAIRMAN: Shall section 16 as amended carry?

(Carried).

Shall section 20 as amended carry?

(Carried).

The CHAIRMAN: I presume the bill should be reprinted. Will the committee recommend that the bill be reprinted?

Hon. Mr. STEVENS: Yes, I would so move.

Mr. HOWARD: Before we reprint the bill I would like to ask a few questions. I was away yesterday, and I want to be clear about certain things. After this bill comes into force—suppose it comes into force within the next two months—do I understand that a company which stays out and does not come under the agreement is not affected at all as to its interest rates?

Hon. Mr. DUNNING: No.

Mr. HOWARD: Not at all? Take a local company in the town I am in, and supposing it is charging $6\frac{1}{2}$ or 7 per cent; they will still continue to charge $6\frac{1}{2}$ or 7 per cent, will they?

Hon. Mr. DUNNING: They will until some member competing with them forces their rate down.

Mr. HOWARD: And when there is none in a town of 35,000 they will take what they get?

Hon. Mr. DUNNING: There is no accounting for the peculiarities of some communities.

Mr. HOWARD: Supposing the company does come in as to the adjustments of their mortgages, the interest rate you fix now does not affect the mortgages except those which are adjusted mortgages or renewals of adjusted mortgages?

Hon. Mr. DUNNING: That is right, and so far as the future is concerned, any mortgages which are made with money obtained from the bank. If your local institution comes to the bank for money it has got to lend that money in accordance with the conditions laid down by the bank.

Mr. HOWARD: Yes, that is perfectly all right; I have not any objection to that; but they will only have to come down to the interest rate on the money they get from the government—on their own money they can charge anything they like.

Hon. Mr. DUNNING: With regard to future mortgage loans, yes.

Mr. HOWARD: That is provided for according to your posted rate, like your posted price.

Hon. Mr. DUNNING: Yes.

Mr. HOWARD: Well, Mr. Chairman, I will not tell you what I think about it then.

The CHAIRMAN: Shall I report the bill?

(Carried).

The committee adjourned.

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